

DETAINED YOUTH
THE FATE OF YOUNG MIGRANTS,
ASYLUM SEEKERS AND REFUGEES
IN LIBYA TODAY

STUDY 1
JULY 2015



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GLOSSARY

Assisted Voluntary Return - Administrative, logistical, financial and reintegration support to rejected asylum seekers, victims of trafficking in human beings, stranded migrants, qualified nationals and other migrants unable or unwilling to remain in the host country who volunteer to return to their countries of origin. (IOM, Glossary on Migration)

Asylum seeker - An asylum seeker is an individual who is seeking international protection. In countries with individualised procedures, an asylum seeker is someone whose claim has not yet been finally decided on by the country in which he or she has submitted it. Not every asylum seeker will ultimately be recognized as a refugee, but every refugee is initially an asylum seeker. (UNHCR Master Glossary of Terms)

Country of origin - The country that is a source of migratory flows (regular or irregular). (IOM, Glossary on Migration)

Detention - The Optional Protocol to the Convention Against Torture (article 4(2)) defines this as any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority. According to UNHCR et al, Monitoring Immigration Detention, Practical Manual, 2014, detention refers to the deprivation of liberty in a confined place from which the person is not permitted or cannot reasonably be expected to leave at will or without authorisation. This report refers to 'immigration detention' - the deprivation of an individual's liberty, usually of an administrative character, for an alleged breach of the conditions of entry, stay or residence in the receiving country. Criminal detention is not the subject of this report and is defined as detention because of arrest or punishment of a person in respect of a criminal offence that carries a custodial sentence.

Irregular migration - Migrants, asylum seekers and refugees and members of their families: (a) Are considered as documented or in a regular situation if they are authorised to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party; (b) Are considered as non-documented or in an irregular situation if they do not comply with the conditions provided for in subparagraph (a) of the present article (art. 5)." (International Convention on the Protection of the Rights of All Migrants, asylum seekers and refugees Workers and Members of Their Families, article 5)

Migrant - At the international level, no universally accepted definition for 'migrant' exists. The term migrant is usually understood to cover all cases where the decision to migrate is taken freely by the individual concerned for reasons of 'personal convenience' and without the intervention of an external compelling factor; it therefore applies to persons, and family members, moving to another country or region to better their material or social conditions and improve the prospect for themselves or their family. The United Nations defines migrant as an individual who has resided in a foreign country for more than one year irrespective of the causes, voluntary or involuntary, and the means, regular or irregular, used to migrate. Under such a definition, those travelling for shorter periods as tourists and business persons would not be considered. However, common usage includes certain kinds of shorter-term migrants, such as seasonal farm-workers who travel for short periods to work planting or harvesting farm products. (IOM, Glossary on Migration)

Irregular migrant - A person who, owing to unauthorized entry, breach of a condition of entry, or the expiry of his or her visa, lacks legal status in a transit or host country. The definition covers inter alia those persons who have entered a transit or host country lawfully but have stayed for a longer period than authorized or subsequently taken up unauthorized employment (also called clandestine/undocumented migrant or migrant in an irregular situation). The term 'irregular' is preferable to 'illegal' because the latter carries a criminal connotation and is seen as denying migrants humanity and human rights according to UN GA resolution 3448 (XXX). (IOM, Glossary on Migration)

International Protection - The actions by the international community on the basis of international law, aimed at protecting the fundamental rights of a specific category of persons outside their countries of origin, who lack the national protection of their own countries. (UNHCR Master Glossary of Terms)

Migration - The movement of a person or a group of persons, either across an international border, or within a State. It is a population movement, encompassing any kind of movement of people, whatever its length, composition and causes; it includes migration of refugees, displaced persons, economic migrants, and persons moving for other purposes, including family reunification. (IOM, Glossary on Migration)

Migration governance - International governance of migration can be understood as a process in which the combined framework of legal norms and organizational structures regulate and shape how States act in response to international migration, addressing rights and responsibilities and promoting international cooperation. (OHCHR, 'Improving human rights-based governance of international migration'. http://www.ohchr.org/Documents/Issues/Migration/MigrationHR_improvingHR_Report.pdf)

Migration management - A term used to encompass numerous governmental functions within a national system for the orderly and humane management for cross-border migration, particularly managing the entry and presence of foreigners within the borders of the State and the protection of refugees and others in need of protection. It refers to a planned approach to the development of policy, legislative and administrative responses to key migration issues. (IOM, Glossary on Migration)

Non-nationals - This term is used in the report to refer to migrants, asylum seekers and refugees in general.

Non-refoulement - A core principle of international refugee law that prohibits States from returning refugees in any manner whatsoever to countries or territories in which their lives or freedom may be threatened. The principle of non-refoulement is a part of customary international law and is therefore binding on all States, whether or not they are parties to the 1951 Convention. (UNHCR Master Glossary of Terms)

Prima facie refugees - Persons recognized as refugees, by a State or UNHCR, on the basis of objective criteria related to the circumstances in their country of origin, which justify a presumption that they meet the criteria of the applicable refugee definition. See also Group-Based Protection Responses. (UNHCR Master Glossary of Terms)

Receiving country - Country of destination or a third country. In the case of return or repatriation, also the country of origin. Country that has accepted to receive a certain number of refugees and migrants on a yearly basis by presidential, ministerial or parliamentary decision. (IOM, Glossary on Migration)

Refugee - A person who meets the eligibility criteria under the applicable refugee definition, as provided for in international or regional refugee instruments, under UNHCR's mandate, and/or in national legislation. (UNHCR Master Glossary of Terms) A person who, "owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinions, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country." (Art. 1(A)(2), Convention relating to the Status of Refugees, Art. 1A(2), 1951 as modified by the 1967 Protocol). In addition to the refugee definition in the 1951 Refugee Convention, Art. 1(2), 1969 (IOM, Glossary on Migration)

Smuggling - "The procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident" (Art. 3(a), UN Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000). Smuggling, contrary to trafficking, does not require an element of exploitation, coercion, or violation of human rights. (IOM, Glossary on Migration)

Temporary Protection - An arrangement developed by States to offer protection of a temporary nature to persons arriving en masse from situations of conflict or generalized violence, without prior individual status determination. (IOM, Glossary on Migration)

Trafficking in persons - "The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits

to achieve the consent of a person having control over another person, for the purpose of exploitation” (Art. 3(a), UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime, 2000). Trafficking in persons can take place within the borders of one State or may have a transnational character. (IOM, Glossary on Migration)

Unaccompanied minors - Persons below the legal age of majority who are not in the company of an adult who, by law or custom, is responsible to do so, such as parents, guardians or primary caregivers. (UNHCR Master Glossary of Terms)

Main sources of glossary:

- IOM, Glossary on Migration, International Migration Law Series No. 25, 2011 available at http://publications.iom.int/bookstore/free/IML_1_EN.pdf
- UNHCR Master Glossary of Terms, June 2006, Rev.1, available at: <http://www.refworld.org/docid/42ce7d444.html>

ACRONYMS

- DCIM** - Directorate for Combating Illegal Migration
- DRC** - Danish Refugee Council
- ECOWAS** - Economic Community of West African States
- EU** - European Union
- ICRC** - International Committee of Red Cross
- IMC** - International Medical Corps
- IOM** - International Organization for Migration
- NGO** - Non-governmental organization
- OHCHR** - United Nations Office of the High Commissioner for Human Rights
- UN** - United Nations
- UNHCR** - United Nations High Commissioner for Refugees

EXECUTIVE SUMMARY

This study paints a damning picture of the immigration detention of young migrants, asylum seekers and refugees in Libya today. Based on in-depth interviews with 45 former detainees (85 per cent of whom were unaccompanied children or young people), the study reveals a consistent pattern of arbitrary detention; of people held for months at a time without any form of due process in squalid, cramped conditions. Detention occurs in facilities across the country, many of which are reported to be under the control of the governing authorities or militia forces. Serious violations, including allegations of violence and brutality, are said to be commonplace, including in some of Libya's most well-known detention centres.

As the first study of its kind to assess the particular plight of detained refugee, asylum-seeking and migrant children and youth in Libya's immigration detention centres, it provides timely information about the current situation in the country. The right to liberty and freedom from arbitrary detention is among the most fundamental of rights belonging to all human beings, and its consistent denial, especially to vulnerable minors and young people, is a matter of the gravest concern. The absence of a humane and orderly framework for handling migration flows in Libya is no doubt a contributing factor to the ever increasing numbers of migrants, asylum seekers and refugees willing to risk their lives in the Mediterranean to reach the safety of Europe.

BACKGROUND

Human rights violations in the course of immigration detention in Libya have been an issue for years. Prior to the 2011 conflict and the overthrow of Gaddafi, Libya as a regional migration hub and gateway to Europe was consistently criticised by human rights observers for pursuing migration management policies that fell far short of international standards. This study updates the situation and finds that the current fragmentation and disarray in Libya provides ever more fertile ground for the abuse of migrant and refugee populations, including children and youth.

The study was carried out from November 2014 to February 2015 using a qualitative methodology that involved intensive interviews with migrants and refugees once they had left Libya and arrived in Europe. The interviews were carried out at research sites in Calais/France, Sicily/Italy, Malta, and the UK and primarily involved children (under 18) and young people (18 to 25 years) who had experienced detention in the two years prior to the start of the study (from November 2012 onwards). Migrants and refugees from North-East Africa (Eritrea, Ethiopia, Somalia and Sudan) were prioritised as being of particular interest as part of a wider research exercise on North-East African migratory routes being carried out by the commissioning organizations involved in the North Africa Mixed Migration Task Force.

The study focused on cases of detention by 'State actors', albeit recognising that the boundaries between State and non-State agents are somewhat blurred with the country being fragmented into two parts controlled by rival governments, each struggling for power and legitimacy, and supported by armed groups. Libyan Dawn, an alliance of Islamist militias and their allies have been in control of the capital Tripoli in the west of the country since August 2014 thus ousting the internationally 'recognised' government to the city of Tobruk in the east of the country. Both sides are battling for the hearts and minds of a myriad of militias in control of different areas.

Thus in the current Libyan context, detention by the 'State' is taken to mean the governing authorities responsible for particular areas whether they represent the 'recognised' government, the de facto government or militias. 45 of the interviewees reported being detained by the authorities (police or soldiers) and then taken to what appear to be 18 different detention facilities. They based their claim on recollections of uniforms, vehicles, premises and insignia. Incarceration by non-State actors without governing responsibility (smugglers, traffickers, civilian gangs) appears to be a common experience too. The study collected information on these experiences but does not include them in the main analysis.

FINDINGS

Based on primary data the study arrived at findings on the following aspects: the drivers of migration, the journey to Libya, the circumstances and conditions of detention, and life after detention.

Drivers of migration: Interviewees gave varying reasons for leaving home depending on where they came from. Those from North-East African countries cited mostly political reasons, violence and conflict as main drivers for their movement and their intent to seek international protection. Many of these reported persecution directed at themselves or their families on account of these factors. The picture from West Africa is the reverse with nearly all interviewees reporting family tensions and inter-personal difficulties as the reason for leaving their countries of origin. Minors say they left alone rather than with family members because they personally faced imminent threats and harassment; because their families couldn't afford to send more than one person; or because as orphans, they had to fend for themselves.

Journey to Libya: Family members often provided financial support for the journey. Those from North-East Africa frequently received money from relatives in the Middle East or Europe. Interviewees from West Africa also received family support though to a lesser extent, and none reported financial assistance from abroad. Transit across the Sahara desert was extremely arduous, migrants and refugees said they had to travel for days with little food and water in the searing heat of the day and the bitter cold at night. They often faced new demands for cash as well as violence from smugglers and tribes in the desert. Women faced the danger of sexual violence. On arrival in Libya, migrants and asylum seekers were sometimes immediately held by smugglers seeking to extort more money from them. Once free to go, they said they started to make a living by picking up odd jobs, for example, in construction or car washing but found day to day life hazardous given the ever present threat of violence and extortion from Libyan civilian gangs.

Circumstances of detention: Interviewees described being arrested abruptly and arbitrarily whilst going about their daily business. The reason for arrest, where given, was usually stated to be 'illegal' entry or lack of papers, usually identity documents or sometimes health cards. Arrests were typically accompanied by violence. None of the migrants and refugees reported any kind of legal process in terms of being informed of their rights or having access to a lawyer. They were only allowed to call families and friends to ask for money to be released; they were not able to apply for asylum and none were offered support to return home. Most migrants and refugees stayed in detention for a number of months.

Conditions in detention: Conditions were frequently described as deplorable. Men and women were usually kept separately but unaccompanied boys were often detained with unknown adult males. Beatings and violence were commonplace and sexual violence by guards, an ongoing risk for female detainees. There was typically no recourse for complaint. Food was usually inadequate; most said they only received one meagre meal a day. Sanitation conditions were deplorable; toilets were filthy and insufficient in number, and access to showers and a change of clothing, rare. Most reported sleeping in crowded cells without bedding or mattresses. Outdoor access was restricted except in situations where detainees were taken out to do unpaid work for detention centre staff or outside employers. Medical treatment was usually lacking. These types of conditions were also found to be prevalent in key immigration detention centres that were visited by international agencies according to detainees, and thus had the benefit of exposure to international standards and requirements. Such facilities include the ones at Sabha, Abu Salim, Brak Shati, and Gharyan.

Life after detention: Interviewees say they were able to leave detention, either by paying hefty bribes, by escaping or simply by being let go at the will of the guards. Sometimes locals came and secured the release of detainees in exchange for their unpaid labour. Migrants and refugees remained vulnerable to re-detention after release though this did not appear to be occurring as much as in the past, possibly because they quickly attempt to cross the Mediterranean to Europe. Once in Europe, the fate of the migrants, asylum seekers and refugees varies. Those who have an unresolved immigration status face an uncertain and difficult future, especially if they are living without support in the 'jungles' (makeshift camps of migrants, asylum seekers and refugees on the fringes of the town) of Calais and elsewhere. Children and young are at risk of being exploited by organised criminal gangs operating in Europe. Those in receipt of some form of protected status were found to be getting on with their lives, acquiring an education, language skills and work in an effort to make a new future for themselves. Some ex-detainees continue to bear the physical and psychological scars of their arduous experiences but a sizeable number said that they were not experiencing any lasting effects.

CONCLUSIONS

While these testimonies indicate clear violations of international human rights law, the current challenge in Libya is to know who is accountable for such breaches. Given the breakdown of law and order, the ongoing political crisis and armed hostilities, and the break-up of the country into areas controlled by two 'Governments' and various militias, the chains of command and control over the various centres where illegal detention is occurring, are unclear. Governing authorities and militias in all parts of the country are reminded that the immigration detention practices found by this study are in breach of international human rights standards in the following ways:

- Detention for immigration purposes ought not to be mandatory or automatic; it should be a measure of last resort, only permissible for the shortest period of time and when no less restrictive measure is available.
- Authorities have an obligation to establish a presumption in favour of liberty, to first consider alternative non-custodial measures, proceed to an individual assessment and choose the least intrusive or restrictive measure.
- The reasons put forward to justify detention should be clearly defined and exhaustively enumerated in legislation.
- If, as a measure of last resort, an authority resorts to detention for immigration-control purposes in an individual case, this should be considered only when someone presents a risk of absconding or presents a danger to their own or public security.
- Administrative detention should not be applied as a punitive measure for violations of immigration laws and regulations, as those violations should not be considered criminal offences.

The right to liberty and freedom from arbitrary detention is among the most fundamental of rights belonging to all human beings. Therefore, the above are minimum requirements for the detention of non-nationals as prescribed by international law. The need for a humane and orderly framework for managing migration flows in Libya is taking on ever increasing importance. There can be little doubt that the absence of such a system is contributing to the growing numbers of migrants, asylum seekers and refugees seeking to escape Libya for the safety of Europe. Record numbers are taking on the hazardous voyage across the Mediterranean; in the space of one weekend in May 2015 alone, Italian coastguards rescued nearly 6,000 migrants and refugees.¹ The widespread detention of non-nationals in appalling conditions in Libya, far from acting as a deterrent to entering Libya, appears to be a contributing factor in the desire of people to leave the country at any cost. Libya, once a destination for migrants and refugees, a place of economic opportunity and safety, is now a departure point at best or a place to escape from at worst.

From the perspective of the migrants and refugees themselves, detention in Libya is but one of many travails they face in their quest for safety, security and better opportunities in life. The study highlights the sheer ingenuity, determination and courage of young migrants, asylum seekers and refugees as they make their way across North and Sub-Saharan Africa, escaping captivity, brutality, and overcoming numerous hardships.

.....
1 Kirchgaessner, 2015.

VOICES FROM DETENTION SAMIR'S STORY

BOX 1

'...My name is Samir. I am 17 years old. I come from Darfur in Sudan. My father died during an attack on our village by government forces several years ago and I went to live with my uncle along with my siblings. I married very young, when I had just turned 17 in accordance with tradition. I married my uncle's daughter in order to preserve my father's name. I never had the chance to go to school. I earned a living by working in the market, running errands for a business man. One day I was taking some money, (equivalent of) 150 Euros, to a local school for orphans on behalf of my boss when the police caught me and took me to a prison. They kept me there for a month, gave me electric shocks, beat me with weapons. Sometimes I was starved for days and also threatened with rape. My uncle managed to get me released because of his connections but the police imposed a lot of conditions which made it very unsafe for me to stay there.

My family thought I should leave for my own safety. My uncle paid 600 Euros to a smuggler to get me to Libya. I was put in a truck; there were 80 of us, Eritreans and Sudanese. The journey across the Sahara took six days and we survived on the little food and water we had taken with us. Some people died from hunger and thirst. When we arrived at the Libyan border, the smugglers divided us up into smaller groups and took us by car to Ajdabiya. People who had money were released immediately. As I didn't have enough, the smuggler took me to a farm and made me work there for 20 days without payment, following which he dropped me off in Tripoli. After about a month, in May 2014, I was arrested and taken to Abu Salim jail. I was kept there for ten days and then transferred to Ain Zara for 20 days. There was no legal process in either facility; no lawyers or judges, the only requirement was to pay but I did not have any money for my release. The UN visited Abu Salim one day and took away a sick person. No-one visited us in Ain Zara. Men and women were separated in both facilities but minors were kept with adults. The officers beat us every day.

In Ain Zara, I didn't know how many women there were, I saw them from afar. The guards used to rape them. We heard the women screaming all the time. I used to see officers walking and talking about rape. We only had one meal a day in both places - macaroni, rice. The drinking water was salty. The toilets were inside the cells in Abu Salim; we put some clothes up for a bit of privacy. The toilets were outside in Ain Zara but too few of them, only three bathrooms for 400 people. If you couldn't find a space in the cell at night, you had to sleep in the bathroom. There was no health care; one man was very sick in Ain Zara but there was no doctor and he died. We were taken out every day from both places to work in the officers' houses, doing cleaning, building works. One day, one of the bosses at Ain Zara took me and another detainee to clean his house. Then, on account of it being Ramadan, he just let us go.

After leaving detention, I worked in a factory in Tripoli for a while but had to leave there due to fighting in the city in around June 2014. I went to Garabulli. I got together the 1000 Libyan dinars required to go to Italy through my own savings and with the help of my friends. When gathering people for the journey, the smuggler kept us locked up in a farm for three days. Then one morning, they took us to the sea, put us on the boat, gave us a phone to call the Italians and a map, and set us off. We spent two days at sea and then called the Italians after which a boat arrived and took us to Sardinia. We were then taken to Torino, given food, clothes and a shower, and let go. They did not take my fingerprints in Italy. I decided to go to France because I saw people who had applied for asylum in Italy living on the streets. I left with a group of Eritreans, and when we arrived in Paris, we learnt that is a place called Calais from which we could go to England "because British protects you". I stayed in Calais for two months - even though I was in a tent in the 'jungle'; I felt safe, at least I wasn't worried that the government would try and get someone to kill me. I managed to get across to England in January 2015.....'

This testimony was given by a 17 year old male asylum seeker from Sudan who was detained in Abu Salim and Ain Zara facilities in Libya in mid 2014. He was interviewed in Calais, France in December 2014. 'Samir' is a pseudonym.

1. INTRODUCTION

1.1. Detention for immigration-related purposes

Globally, countless numbers of migrants, asylum seekers and refugees are at risk of immigration detention each year. This detention is often arbitrary or unlawful and involves incarceration for months or in some cases years in overcrowded and squalid conditions falling far below international standards. Such detention constitutes one of the most opaque areas of “public” administration and often has little or no independent oversight – in Libya as well as in many other countries. Many human rights violations can and do occur in these circumstances.² Women and children are especially vulnerable to violence and abuse in places of immigration detention, and studies have shown that even short periods of immigration detention can have life-long negative impacts on physical and mental health.³

Migrants, asylum seekers and refugees who enter a country irregularly may be detained in prisons, closed camps, detention facilities, police stations or airport transit centres on either criminal or administrative grounds depending on the law of a particular country. Administrative detention is usually used to hold non-nationals. In some countries, those entering irregularly are subject to criminal penalties⁴ and may face prolonged detention, especially if they are unable to pay for their release. Such practices contravene international and regional human rights law and standards⁵ which define the right to liberty and freedom from arbitrary detention as among the most fundamental of rights belonging to all human beings. There are concerns among human rights experts that governments are increasingly using detention as a way of managing irregular migration.⁶

According to the UN Committee on the Rights of the Child, a particular issue is the increasing number of migrant and refugee children (up to end of their 17th year) and young people (from 18-25 years) on the move.⁷ Among them, unaccompanied minors and youths make a particularly vulnerable group as they may be subject to multiple human rights violations during the migratory process, including sexual exploitation and abuse, military recruitment, child labour, human trafficking, abduction and forced marriage as well as detention. International human rights observers say that such children are routinely denied entry to a country or detained by border or immigration officials, do not have their asylum claims handled in an age and gender sensitive manner by authorities, and may not have access to asylum procedures at all.⁸ Children may migrate unaccompanied for many reasons including, to escape from the persecution of the child or the parents; international conflict and civil war; response to natural disasters; as victims of trafficking; from a desire to reunite with parents or other members of their family; in search of better economic and/or educational opportunities or from a sense of adventure and out of curiosity.⁹

Concerns about migrant, asylum seeker and refugee detention are echoed in the North Africa region by organizations working on migration-related issues. Issues arising around the detention of migrants, asylum seekers and refugees include:

- poor and overcrowded prison conditions
- lack of appeal rights
- mass forced returns
- indefinite detention periods
- risk of torture and ill-treatment
- risk of refoulement
- lack of access to national human rights institutions, National Preventive Mechanisms¹⁰ and other mandated organizations, which may include UNHCR, OHCHR, IOM, ICRC, and the UN Sub-Committee on the Prevention of Torture

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2 International Detention Coalition, ‘Children are children first and foremost: Australian Human Rights Commission National Inquiry into Children in Immigration Detention IDC SUBMISSION,

3 International Detention Coalition website, <http://idcoalition.org/issues/ending-detention/> (accessed 21 February 2015)

4 Sampson and Mitchell, 2013, p. 99.

5 Crépeau, 2013.

6 International Detention Coalition, *ibid.*

7 IOM, 2013.

8 Committee on the Rights of the Child, 2005.

9 IOM, 2013. See also Committee on the Rights of the Child, 2012.

10 Set up under the requirements of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)

Although legislation may prohibit the arbitrary arrest and detention of persons, the current political uncertainty and state of the legislation varies across the region; it may therefore be unclear in some countries what legislation exists and how it is being implemented. Practitioners note the increasing numbers of vulnerable migrants, asylum seekers and refugees, including unaccompanied children, who find themselves in detention. This leads to particular challenges such as the applicability of adult migration control measures to children, and the ability of national authorities to meet the specific needs of children and young people in terms of health, education and guardianship.

1.2. International standards

International standards regulating the detention of migrants, asylum seekers and refugees are derived from the following key instruments:

- The Universal Declaration of Human Rights (1948) guarantees to migrants, asylum seekers and refugees in an irregular situation, the right to life, liberty and the security of person (art. 3) and protection from arbitrary arrest, detention or exile (art. 9);
- The International Covenant on Civil and Political Rights (1966) (art. 9, para. 1) provides that everyone has the right to liberty and security of the person, no one shall be subjected to arbitrary arrest or detention and no one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law. The Human Rights Committee, which monitors the implementation of the Covenant, in its general comment No. 8 (1982) on the right to liberty and security of persons, stated that this provision is applicable to all deprivations of liberty, including immigration control;
- The International Convention on the Protection of the Rights of All Migrants and Members of Their Families (1990) protects the right to liberty and security of persons and provides all migrant workers, regardless of their status, with the right not to be subjected individually or collectively to arbitrary arrest or detention and the right not be deprived of liberty except on such grounds and in accordance with such procedures as are established by law (art. 16, paras. 1 and 4);
- The United Nations Convention (1951) and Protocol (1967) relating to the Status of Refugees (especially Convention art. 26 on freedom of movement and art. 31 on the non-penalisation of refugees and asylum seekers for their irregular entry into a country);
- The Convention on the Elimination of all Forms of Discrimination against Women (1979);
- The Convention on the Rights of the Child (2000);
- The United Nations Convention on Transnational Organised Crime (2000) and its Protocols (2003-2005).

Other standards specifically on the issue of detention are:

- The United Nations General Assembly, 'Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment', 9 December 1988, A/RES/43/173;
- The United Nations, 'Standard Minimum Rules for the Treatment of Prisoners', adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977;
- The Deliberation No. 5 of the United Nations Working Group on Arbitrary Detention contained in E/CN.4/2000/4, 28 December 1999.

This list is non-exhaustive and there are various other provisions which apply to the detention of migrants, asylum seekers and refugees. In general terms, these regulations place limits on the ability of States to detain individuals irrespective of their immigration status. While States have a sovereign right to protect their borders and determine their own laws, including over the admission, stay, or removal of non-nationals present in their country, they are obligated to govern migration flows in a way that upholds the rights of individuals within their territory and under their jurisdiction. Human rights are inalienable and should not be granted on the basis of citizenship.¹¹ International law requires the detention of migrants, asylum seekers and refugees to take place in a consistent and rational manner, in conditions that meet basic requirements of human rights, humanity, and dignity while taking into account proportionality between the harm caused by detention and the policy aim achieved. With regards to refugees, the principle of non-refoulement under both conventional and customary international law means that asylum seekers and refugees should not be returned to their country of origin if their life or liberty is at risk.

International law lays down the following general principles and specific standards.¹²

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11 Thompson, 2013.

12 See the following document for detailed references to relevant statutes supporting these provisions, IOM, 'International Standards on Immigration Detention and Non-custodial Measures', International Migration Law Unit Information Note, November 2011; and also OHCHR's Recommended Principles and Guidelines on Human Rights at International Borders (2014) at http://www.ohchr.org/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf

General principles

Principle 1: A presumption against detention should be established in law, and human rights-compliant alternatives to detention prescribed.

Principle 2: Detention is a measure of last resort imposed only where less restrictive alternatives have been considered and found inadequate to meet legitimate purposes. Detention must have a legitimate aim, be proportionate to the aim pursued and strike a fair balance between the conflicting interests.

Principle 3: Grounds for detention must be established by law, be of limited scope and duration and exhaustively enumerated in legislation.

Principle 4: Detention must be ordered or approved by a judge and subject to automatic regular judicial review in each individual case.

Principle 5: Detention must not be indefinite.

Principle 6: Children should never be detained on the basis of their own or their parents' migration status.

Specific standards applicable for immigration related purposes

1. Right to be informed upon entry in the territory and while in detention about the reasons for detention.
2. Right to communicate with the outside world.
3. Obligation to register the presence of any migrants, asylum seekers and refugees placed either in custody or in detention.
4. Obligation to establish a maximum period of detention in national legislation.
5. Right to humane detention conditions and obligation to respect the inherent dignity of every human person (adequate food, drinking water, furniture, sanitation, regular access to open air and recreational activities, and separate accommodation and sanitation for men, women and unaccompanied minors) Migrants in detention should be provided with access to adequate medical and health care, including mental health care, where appropriate.
6. Obligation to allow the independent monitoring of reception centres.
7. Right to due process, including access to a lawyer/counsel and consular services if desired by the individual concerned (this would not, for example, be appropriate for refugees and asylum seekers fleeing persecution by their State of origin), and the right of appeal.
8. Considerations in cases of detention of vulnerable individuals:
 - Any child who is exceptionally deprived of his or her liberty is to be treated in a manner which takes into account the particular needs of the child's age and his or her rights, among others, to be separated from unrelated adults. Child protection agencies, rather than immigration agencies, should take primary responsibility for children in detention. According to recent guidance from the Committee on the Rights of the Child, the immigration detention of children is never in the best interests of the child and always constitutes a child rights violation.
 - Women should be detained in separated facilities where female staff are on duty. States should set up effective mechanisms for dealing with complaints of sexual violence, including within the detention system, and should also provide victims with protection, psychological and medical assistance.
 - Refugees and asylum seekers should have access to the national asylum systems and to UNHCR; and should not be penalised for irregular entry into a country (art. 31 of the 1951 Refugee Convention).

The following guidelines can assist in the application and monitoring of standards in practical settings:

- UNHCR, Association for the Prevention of Torture (APT) and the International Detention Coalition (IDC), 'Monitoring Immigration Detention: Practical Manual', 2014
- UNHCR, 'Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum seekers and Alternatives to Detention', 2012
- OHCHR, 'Recommended Principles and Guidelines on Human Rights at International Borders', 2014

2. RESEARCH OBJECTIVES AND METHODOLOGY

2.1. Research objectives

The aim of the research was to shed light on the issue of migrant, asylum seeker and refugee detention in North Africa with a particular focus on unaccompanied and separated minors and young people. The study examined whether the detention of young migrants, refugees and asylum seekers is in line with international law and standards in order to engender an evidence-based understanding of the issue and to support the development of a policy response from governments, international organizations and civil society groups.

The parameters of the research were as follows:

- The study looked at detention in contravention of international standards i.e. detention by the State and its agents (military, police etc.).¹³ However, it was recognised at the outset that the boundaries between State and non-State actors may be blurred, for instance, in terms of the role of militias in conflict-affected areas, and also the responsibility of the State in preventing detention by non-State actors.
- Detention in general is taken to mean the deprivation of liberty in a confined place from which the person is not permitted to or cannot reasonably be expected to leave at will or without authorisation. This report refers to 'Immigration detention' - the deprivation of an individual's liberty, usually of an administrative character, for an alleged breach of the conditions of entry, stay or residence in the receiving country. In practice, as will be seen in the findings from primary data, it may be impossible to tell which, if any, authority has sanctioned detention. (Definition taken from UNHCR et al, *Monitoring Immigration Detention, Practical Manual*, 2014, available at <http://www.refworld.org/pdfid/53706e354.pdf>)
- The intended scope of the study was North Africa, with a particular focus on Libya, Egypt and Sudan. In practice, the primary research found the vast majority of identified detention cases to be taking place in Libya. Too few cases were identified from Egypt or Sudan in the research sites to arrive at generalised conclusions. It became necessary to re-shift the focus of the study on to Libya specifically. The prevalence of migrant, asylum seeker and refugee detention in other countries in North Africa (Algeria, Egypt, Libya, Morocco, Sudan, and Tunisia) is therefore simply presented as part of the context and derived from information available in secondary sources.¹⁴ The priority interest was on people from Eritrea, Ethiopia, Somalia and Sudan in order to better understand the North-East African migratory route as part of the North Africa Mixed Migration Taskforce's wider research in this area. Half of the intended sample of 50 persons was to comprise nationals of these States. However, individuals from Sub-Saharan Africa/West Africa, Middle East, South Asia and elsewhere were also to form part of the interview sample in order to explore the prevalence and experience of detention.
- The study covered people on the move across international borders whether they were defined as migrants, asylum seekers and refugees, or victims of trafficking. These are mixed flows and the distinction between the categories not clear cut. For instance, those from countries of particular interest to the study (Eritrea, Somalia, Sudan) likely qualify for asylum but had often not applied for it at the time and location in which they were interviewed. The emphasis of the research was on the detention experience of those crossing international borders rather than their administrative status.
- Children (up to the 17th year) and young people (aged 18-25), especially those who are unaccompanied or separated from care-givers, were a particular focus, although access was, as anticipated, an issue.
- In terms of gender breakdown, the study aimed to ensure a sufficient number of female interviewees to shed light on the unique facets and challenges facing women and girls on the move, while anticipating, based on knowledge of migration trends in North Africa, that most individuals in such circumstances and fitting the characteristics of the study would likely be male.
- The time period under examination was within two years of the study, i.e. from November 2012, given that the fieldwork started in November 2014 (and continued till February 2015).

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¹³ The United Nations Working Group on Arbitrary Detention defines detention as contrary to the provisions of the major international human rights instruments where it falls into the following 3 categories: 1. Where there is no legal basis for the deprivation of liberty; 2. When a person is deprived of their liberty because they have exercised the rights and freedoms guaranteed in the UDHR and the ICCPR; 3. When a person has been deprived of their liberty after a trial which did not comply with the standards for a fair trial set out in the UDHR and other relevant international instruments.

¹⁴ Organizations in the North Africa Mixed Migration Taskforce (IOM, UNHCR, DRC) define 'North Africa' differently. The countries listed here come under the North Africa grouping of either all or one of the Task Force member organizations. UNHCR also includes 'Western Sahara' in its definition of North Africa but it is not included in this report due to lack of information relating to migrants, asylum seekers and refugees and detention.

Priority elements of the investigation were:

- Scope and prevalence of the issue – estimates of how many migrants, asylum seekers and refugees face detention and their profile (sex, country of origin, age with special reference to children, including unaccompanied and separated children (up to 17 years old) and young adults (18-25 years).
- Experience of migrant, asylum seeker and refugee detainees – where they come from, migration routes, how they end up in detention, socio-economic backgrounds, experience and conditions in detention, future prospects, including for children, unaccompanied and separated children, and young adults.
- Context of law and policy on detention, prisons and related issues – government action, how migrants, asylum seekers and refugees compare to people who do not fall into these categories, unaccompanied minors and migration etc.
- Identification of international standards and best practices in this field – to what extent standards and best practices are applied across the region (e.g. grounds for detention, procedural safeguards, right to information, registration, length of detention, conditions, monitoring, vulnerable groups (women, children, long-term residents), alternative non-custodial measures, voluntary return).
- Prevalence of interest in applying for asylum, access to asylum processes, and how these aspects work in practice. Specific reference to unaccompanied minor asylum seekers and refugees and their experience.
- Risk of refoulement for refugees and asylum seekers.
- Mapping of existing detention facilities – location, conditions, and numbers of migrants, asylum seekers and refugees.
- Policy response – what responses exist on the part of government, multilateral institutions, civil society as well as proposals for future action.

Terminology

Migrants, asylum seekers and refugees

The movement relevant to this study comprises mixed flows of migrants, asylum seekers and refugees. In order to encompass this complexity of movement, the study uses the collective term 'migrants, asylum seekers, and refugees' when the text is making general points about migratory flows (it may use simply 'migrants and refugees' for editorial reasons at times). It uses the individual terms, 'migrants', 'asylum seekers' and 'refugees' when referring to specific cases collected by this study, according to their specific legal meaning and based on an examination of each case and a determination of whether they are 'migrants' or 'asylum seekers' on the basis of the facts provided. The report does not use the term 'prima facie refugees' as this determination rests with individual States and UNHCR.

Trafficking and smuggling

Another issue of terminology is the reference to 'trafficking' and 'smuggling' both of which have a very specific meaning under international law (see Glossary). In practice, particularly where human trafficking occurs across borders, it may be difficult to differentiate a victim of trafficking from a migrant who is the subject of a smuggling operation.¹⁵ Smuggled migrants are highly vulnerable to falling victim to trafficking or other forms of exploitation during their journey or once they arrive in their destination country. There is also overlap in the profiles of those who facilitate this movement, as they may smuggle some members of a group while trafficking others. Although smuggled migrants voluntarily enter into arrangements with migrant smugglers, they are highly vulnerable to falling victim to trafficking, exploitation and other crimes (including extortion, abuse, sexual assault, rape or torture). The circumstances of their smuggling journey may be such that the choice they initially make to be smuggled ceases to be a meaningful one.¹⁶ For instance, the precarious situations individuals find themselves in en route, may make them dependent on their smugglers with little choice but to continue their journeys, regardless of the conditions they must endure.

It is also important to mention the consequences of blurring of this distinction in terms of protection. For instance, according to the Palermo Protocol against Smuggling, a person who is an object of smuggling

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¹⁵ For more detailed discussion on the legal distinction between human trafficking and migrant smuggling, see Policy Guide on Criminalizing Trafficking in Persons (Bali Process, 2014a), pp.8-9 and Policy Guide on Criminalizing Migrant Smuggling (Bali Process, 2014b), pp.9-10.

¹⁶ The Protocol against the Smuggling of Migrants by Land, Sea and Air (Smuggling of Migrants Protocol) includes mandatory protection provisions similar to those set out in the Trafficking in Persons Protocol.

should normally be sent back to his/her country of origin¹⁷, while according to the Palermo Protocol against Trafficking, other options are more appropriate. There is thus a risk in assuming everyone is considered to be the subject of smuggling, without further attention to his or her situation. In practice, the same person could simultaneously be a victim of trafficking, and/or a refugee, with different legal regimes applying at the same time (and in such cases, the most protective rule should apply). The distinction between the concepts is sometimes difficult to make in practice but it is nonetheless crucial that these differences are made when dealing with individual cases.

Detention centres

The use of the terms 'detention centres', 'detention facilities', or 'immigration detention centres' are used interchangeably in this report to refer to the places in which migrants, asylum seekers and refugees are held. While the report concerns immigration detention, the facilities in which people are held are not necessarily immigration detention centres, since they may be prisons or other types of premises.

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17 With exceptions set in Art.19 saving clause in relation to asylum seekers and refugees, stating "Nothing in this Protocol shall affect the other rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non- refoulement as contained therein."

2.2. Methodology

2.2.1. Methods

The primary research involved the collection of original qualitative data from interviews with migrants, asylum seekers and refugees. Statistical data was used for reference purposes where already available. The following methods were used:

- Desk review comprised an analysis of secondary sources – existing publications, grey literature, and internet materials.
- Interviews (face-to-face, email, Skype) of key informants from inter-governmental bodies; local civil society organizations and refugee/migrant groups; and international NGOs. Much of this research was carried out during visits to the project sites and through meetings with local practitioners. The study also received comments from key informants in Libya on the draft report. There was no access to authorities in countries of detention (for instance, departments dealing with issues such as prisons, rule of law, human rights, social welfare) due to heightened sensitivities around researching these matters. Nor were foreign embassies consulted for the same reason.
- In-depth interviews were carried out with 50 migrants, asylum seekers and refugees who had experienced detention in North Africa. A questionnaire was used for conducting semi-structured qualitative interviews. Interviews were recorded at times (if permission was obtained from the individual concerned) but recordings were not transcribed.
- Interviews were conducted in a language comfortable for the interviewee, and interpreters engaged as necessary. The majority of interviews (34/51) were carried out in English, and the rest in French, or the language of the countries of origin – Arabic, Somali, Oromo, and Tigrinya (see Table 1). Nearly all interviews were carried out face to face, with only two carried out on the phone/skype. The majority of interviews, 42/51, were carried out directly by the researcher without the need for translation support. Where this was required, the researcher identified a translator. Migrants, asylum seekers and refugees had the option to nominate someone if they wished (e.g. close family member, friend) to translate for them providing they felt able to be fully open in front of them about the range of experiences they had suffered.
- Data sources. The study aimed to identify at least five ongoing data sources aside from IOM and UNHCR. The research found organizations working on the ground tracking migration flows in their localities but none gathered consolidated data on detention.

Language	Number of interviewees
Arabic with English translation	6
English	34
French	6
Oromo with English translation	1
Somali	2
Tigrinya and English	2
Total	51

2.2.2. Research sites

The fieldwork was to be carried out by proxy in arrival locations in Europe, in detention centres in Italy and in particular, at arrival points in Lampedusa, due to the security situation and political sensitivities in North Africa. The study was to be facilitated by the Praesidium Project, a collaboration of IOM, UNHCR, the Italian Red Cross and Save the Children, and staff were to help screen new arrivals of migrants, asylum seekers and refugees for those who had been in detention in the countries of focus.

However, the study was adapted at the planning stage. There were challenges in obtaining timely access to government-run detention and transit centres and the Praesidium Project was unable to assist in the screening of new arrivals for detention experiences. Circumstances on the ground also changed as the centre in Lampedusa was closed for refurbishment when the fieldwork began. Other features of the population movement, such as the very limited stay of migrants, asylum seekers and refugees in Italy while on transit to other parts of Europe; the traumatised state of people arriving at landing sites and the ethical issues in interviewing them in such circumstances etc. also made it necessary to consider alternative approaches.

The scope was therefore adapted to cover other points of transit and arrival for migrants, asylum seekers and refugees, namely, France (Calais), Italy (Sicily), Malta and the UK. The approach was modified to seek out potential interviewees through informal centres, community facilities and charitable networks rather than official detention centres. Migrants, asylum seekers and refugees arriving by sea from North Africa are initially detained in official facilities, for a few days in Sicily, for a few months in Malta. They then move into open centres or leave for other parts of Europe. Most non-nationals arriving in Sicily quickly move on, many heading for destinations in Northern Europe – Germany, Sweden and the UK. In Calais/France, those heading for the UK are in makeshift camps while they await opportunities to cross the English Channel irregularly.

Information on the number and profile of migrants, asylum seekers and refugees in each of these locations is as follows:

- In Calais/France, there are no official statistics, but key informants in those locations estimated numbers, as of February 2015, to be 1,500–2,000, of which 15–20 per cent were estimated to be unaccompanied minors, and 10–15 per cent women. Of the estimated 2,000–2,500 migrants, asylum-seekers and refugees along the Northern French coastline most were from Sudan, Eritrea, Ethiopia, Afghanistan, Pakistan, Syrian Arab Republic and Egypt (in descending order). Notably there were few, if any, individuals in this location from West Africa as compared to other research sites.¹⁸
- In Malta, UNHCR recorded 928 asylum seeker arrivals in 2014 (568 came by boat and 29 per cent of arrivals declared themselves to be children), and 87 arrivals by boat in January 2015.¹⁹ Most arrivals were from the Syrian Arab Republic followed by Somalia, Sudan, Eritrea and Gambia.²⁰ As of February 2015, 679 persons were residing in open centres, of which some 75 per cent were males, and 13 per cent minors (both male and female). This number comprised 31 nationalities in the open centres, most were from Sub-Saharan Africa and the Middle East, with the majority from Somalia, Libya, Nigeria, Eritrea, Gambia, Sudan, Mali and Ethiopia (in descending order).²¹
- In the two project areas in Sicily/Italy (Catania and Syracuse), 2014 government records showed 9,838 arrivals in Catania of which ten per cent were women and 15 per cent children (seven per cent of the overall number being unaccompanied minors); and 44,275 arrivals in Syracuse of which ten per cent were women and 19 per cent were children (with ten per cent of the overall number being unaccompanied minors). There were 68 different nationalities among all arrivals in Italy with the greatest number coming from Eritrea, Syrian Arab Republic, Mali, Nigeria, Gambia, Somalia, Senegal and other countries in Sub-Saharan Africa (in descending order).²²

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18 Estimates from study researchers working on the ground in Calais in refugee status determination in February 2015.

19 UNHCR, 2015.

20 UNHCR, 2015.

21 Agency for the Welfare of Asylum Seekers/ Ministry of Home Affairs/ Malta, 'Open centre statistics as at 6 February 2015'

22 Italian government department records, Dipartimento Della Pubblica Sicurezza, Direzione Centrale Dell'immigrazione E Della Polizia Delle Frontiere, 'Riepilogo Per Nazionalita' Delle Persone Sbarcate', 1 January to 30 September 2013 and 2014, and also 'TABULATO SBARCHI SUDDIVISI PER REGIONE, PROVINCIA E LOCALITA' DI RILEVAMENTO', 1 January to 30 September in 2013 and 2014 also.

2.2.3. Sample description

A total of 51 migrant, asylum seeker and refugee interviews were carried out. Most (39 per cent or 20/51) were in Sicily/Italy when interviewed; followed by 37 per cent in Calais/France (19/51); then 20 per cent in Malta (10/51), and four per cent in the UK (2/51). The profile of the sample was as follows:

Nationalities: Thirteen different nationalities as shown in table 2: North-East Africans (Eritrea, Ethiopia, Somalia and Sudan) made up 55 per cent of the sample, followed by 41 per cent of West Africans (Gambia, Guinea, Mali, Mauritania, Nigeria, and Senegal), and the remaining two per cent from the Middle East (Palestine and Syrian Arab Republic). This is not necessarily representative of the population in the research sites but rather due to the sampling methodology as half the sample had to come from North-East Africa due to the particular interest of the North Africa Mixed Migration Task Force in examining the North-East African migratory route. Most migrants, asylum seekers and refugees came from urban areas in their home countries.

Table 2		Sample breakdown by nationality
Nationality	Number of interviews in sample	
North-East Africa		
Eritrean	6	
Ethiopian	3	
Somali	8	
Somali/Ethiopian	1	
Sudanese	10	
West Africa		
Gambian	9	
Ghanaian	1	
Guinean	1	
Malian	1	
Mauritanian	1	
Nigerian	4	
Middle-East		
Palestinian	1	
Syrian	1	
Total	51	

Age: 86 per cent (44/51) of the sample constituted children or young people (table 3). 27 per cent (14/51) were minors under 18 years of age, and a further 59 per cent (30/51) were young people between the ages of 18 to 25 – many of these were actually just 18 years of age (8/51) with the net result that the actual percentage of interviewees who experienced detention as children was 45 per cent (23/51). All minors, barring one individual, were unaccompanied. This proportion of children and young people is not representative of arrivals; the study purposefully sought out interviewees under the age of 18 (children) and between the years of 18–25 (young people), given the specific protection issues facing this group. Data from each of the project sites (see previous section) suggests that children under 18 constitute around 15 per cent of overall arrivals. Recent reports say that arrivals are getting younger; sometimes as young as seven, as word reaches countries of origin that minors have guaranteed protection status in Europe thus apparently encouraging younger migration.²³ This study did not encounter such young unaccompanied children, whether in detention or not.

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23 Kenya, 2015.

Table 3		Sample by age
Age at time of study	Number of interviewees	
16	2	
17	12	
18	8	
19	-	
20	6	
21	1	
22	7	
23	4	
24	2	
25	2	
26	4	
27	-	
28	-	
29	1	
30	1	
31	-	
32	-	
33	-	
34	1	

Gender: The majority of migrants, asylum seekers and refugees identified in this study (43/51) were males; there were relatively few females (8/51) in the sample.²⁴ Nearly all the female interviewees (6 out of 8) were over 18 years of age, i.e. two female minors of or under 18 years had been held in detention, one as an unaccompanied minor, the other with her family.

Marital status: 38/51 of interviewees were single (34/51 males and 4/51 females). 13/51 were married/cohabiting/engaged and of these only two individuals had children back home, and another was pregnant. Male migrants who were married were travelling alone, having left their wives, and in a couple of cases, their children, back home.

Education: The majority had low levels of education. 10/51 had no education; 25/51 had been educated to primary level; 9/51 had a secondary education; four individuals had gone to university; and one had been educated in a Koranic school, and there was no information on the two others.

Occupation: Most had unskilled or semi-skilled jobs back in their country of origin. Many (11/51) had jobs as farm hands, tending animals, shepherding; 15/51 reported having no occupation though the majority of these were minors (11/51). The remaining 25/51 worked in various unskilled and semi-skilled jobs including car mechanic, cleaner, construction worker, donkey cart driver, electrician, family business, grave digger, housemaid, military, oil refinery worker, plumber, welder, trainee at a football academy or said they were students.

2.2.4. Sampling techniques

The study did not use probability sampling techniques; i.e. random sampling of a population to arrive at generalisations and statistical inferences. This was not possible within the scope of this study, if possible at all. The overall population of migrants, asylum seekers and refugees is unknown; and even in the specific research sites the numbers are often indeterminate and fluid. The high turnover of population and the variability in migration trajectories made it unfeasible to produce reliable data, to show for example what proportion of migrants, asylum seekers and refugees had experienced detention. The very nature of the study based on the qualitative research of a limited sample restricted the ability to arrive at generalisations on the scope and prevalence of the problem or to make specific allegations. The study did not collect statistical evidence; it gathered verbal testimonies to show patterns of experience.

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²⁴ North Africa Mixed Migration Taskforce agencies report that this is not necessarily reflective of the current situation as the share of female migrants, asylum seekers and refugees trying to reach Europe via the Mediterranean has increased and comprises both Syrian families (with accompanied children) and people born in Libya but without Libyan citizenship.

Purposive sampling methods were used to identify interviewees who met the characteristics of the study; this included consciously targeting people of the relevant age and origin i.e. a priority focus on unaccompanied minors and young people and 50 per cent of the sample from North-East Africa. Contacts were made through local charities and the research was carried out by locally based researchers with first-hand knowledge of the situation on the ground. Referrals were also solicited by key informants, and the migrants, asylum seekers and refugees themselves, using a snowball sampling methodology.

It is not possible to say whether the sample is representative of those experiencing detention in Libya without knowing the overall population of detainees and their characteristics. The study cannot say if minors/young people are more at risk of detention, or whether this experience is more prevalent among people from North-East Africa. However, the study can confirm that the detention of minors is a critical issue, given that this should be a last resort measure and yet the study was able to find significant numbers experiencing detention under the age of 18. The reports from detainees and key informants also indicate that people from Sub-Saharan Africa are particularly targeted by the authorities for detention; in this sense, the over-representation of people from North-East Africa in the sample may well give a biased impression of the proportion of North-East Africans in detention vis-a-vis those from Sub-Saharan Africa.

The study faced many challenges in finding people for interview (see Box 2 for a grassroots perspective from one of the researchers):

- The characteristics of the study were rather specific and did not apply to the entire migrant, asylum seeker and refugee population in the research sites i.e. it only applied to a sub-set: those who had experienced detention in North Africa in the previous two years. It is difficult to estimate what proportion of the overall population has experienced detention. However, available data suggests it could be as little as six per cent: 170,000 reached Italy alone in 2014²⁵, by comparison the estimated numbers in detention in Libya in 2014 were 5,000 – 10,000.²⁶ The research team certainly faced challenges in finding qualifying interviewees: it took several researchers a period of two months to identify and interview 51 migrants, asylum seekers and refugees across four research sites. Not only was it difficult to find people who had been detained; once found, it was hard to persuade them to be interviewed. For example, the UK researcher working through community contacts and networks identified ten potential candidates but eventually only two were willing to share their testimonies.
- The reluctance of migrants, asylum seekers and refugees to speak for fear of reprisals;
- Fatigue among the targeted population with interviews about their stories (especially those who have been through asylum processes);
- The sensitivity of the subject matter in terms of talking of experiences of violence and in certain instances, rape;
- Difficulties in obtaining authorisations to enter official centres:
 - In Italy, as access to the main detention and transit centres was not obtained as originally planned, this meant painstaking efforts to identify migrants, asylum seekers and refugees residing in multiple small homes and shelters across Sicily.
 - In Malta, prior to permission being received, contacts were made with migrants, asylum seekers and refugees outside centres resulting in five interviews, a further five interviews were facilitated by access to official centres.
 - In total, 45 out of the 51 interviews were conducted outside the official detention centres that were originally intended to be the location for this study.
- In Calais, migrants, asylum seekers and refugees live in makeshift camps; no authorisation is required but this setting has its own difficulties as informal authority structures operate. For instance, smugglers and their informants who are in the camps themselves are suspicious of anyone coming to carry out interviews; they eavesdrop on conversations and interrupt discussions. It was particularly problematic accessing women and minors (even if unaccompanied), for instance, researchers observed women having to ask permission from male figures before they were able to speak to outsiders.
- Logistical challenges, including language barriers and finding suitably qualified interpreters; the high turnover of the population (e.g. appointments were made in advance only to find people were no longer available or had moved on); finding a convenient time for carrying out such interviews (e.g. in Calais, people are awake at night trying to cross into the UK and asleep during

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25 IOM, 2015.

26 Human Rights Watch, 2015.

the day); finding a suitable private space for carrying out in-depth interviews lasting a couple of hours in busy camps and centres.

Despite conscious efforts and the original intent of the study, researchers were only able to trace three cases of asylum seekers detained in Egypt and one in Sudan. By contrast, researchers were more easily able to trace people who had been in detention in Libya. This is not to say that detention in Egypt and Sudan does not occur, but rather that the study was unable to find suitable candidates. It seems that relatively few cases passed through Egypt on their way to the research sites, and those who had been there were not detained; for instance, a number of Syrians met in Malta, had been in Egypt legitimately for a time but left before their visa expired. In addition, those who take that route do not necessarily stay in the research sites for very long; Syrians arriving in Italy are said to head straight to other parts of Europe. Many asylum seekers from Eritrea, Somalia and Ethiopia passed through Sudan but did not complain of detention by State agents, rather the detention experience, where it occurred, was at the hands of smugglers.

CARRYING OUT INTERVIEWS: THE PERSPECTIVE OF A RESEARCHER

BOX 2

I carried out the task of producing interviews for the 'migrants and detention project' in three stages: looking for profiles, making an appointment; and carrying out the interviews.

Looking for profiles

1. Method: All the people I met were living in the 'jungles' of Calais: Tioxide, Bois du brûle (address: Rue des Garennes, 62100 Calais) and the 'Sudanese Jungle'. I chose these locations because people are used to seeing me and I know people who can make connections with their friends. It was really important for people to trust me as the interviewer. My approach was to explain the project and the subject of the report. A lot of people were interested in telling me about their experience. The first reaction was always the same: "Libya is terrible". Men, women, unaccompanied minors all expressed concern about detention in Libya. The most difficult part was finding people who were willing to report details about their detention experience.

2. Problems faced: I faced three problems in identifying suitable candidates due to language - most do not speak English and sometimes do not speak Arabic either; and fear of reprisals. In addition, in identifying women and unaccompanied minors for interview, I faced the problem of an informal male hierarchy in the 'jungle': most of the women and children, even if they are unaccompanied minors, have to ask permission from someone (i.e. a male) before they could agree to speak to me.

3. Language: I decided to use an Arabic translator for four reasons: (1) During my initial contact and introduction of the report, I realised that people were keener to be interviewed when the Arabic translator was present; (2) They felt more comfortable in expressing themselves in Arabic; (3) To ensure that the research covered the cross-section of people who had experienced detention and not just English speakers.; (4) To use a neutral translator from the outset rather than rely on someone staying in the jungle who could potentially misrepresent what the interviewee was saying. The choice of Arabic as a language influenced the interviews I could carry out: people interviewed were mostly Sudanese and Ethiopian people from the Oromo region where they speak Arabic. I also interviewed one Eritrean who also spoke Arabic. These people also had a knowledge and understanding of English but asked to do the interview in Arabic as they felt more comfortable conversing in that language.

Setting up an appointment for the interview

The timing of the appointment was really important as people trying to get to the UK do not sleep at night and rest during the day; life in Calais is structured around the timings of access to different services such as food, healthcare, showers. I would set up appointments one or two days ahead but found that 50 per cent of interviews would fall through either because people were too busy or because they had crossed into the UK or left for somewhere else.

Carrying out the Interview

1. Conditions: out of six interviews carried out by me, five were carried out in a closed office and one inside a car. On each occasion, I sought the agreement of the interviewee to ensure that they felt comfortable to speak in the chosen environment. One interview was carried out inside a car for logistical reasons: the person wanted to be interviewed there and then and did not want to leave the 'jungle'. As I wanted to ensure the confidentiality of any information provided and to avoid being disturbed by anyone while the interview was ongoing, I arranged for it to take place in a car. Tea was offered to interviewees and breaks were taken at their convenience. The average time taken to carry out one interview was 1 hour 45 minutes.

2. Sensitivity: All the people interviewed displayed sensitivity to answering questions about their backgrounds, especially when talking about their families and the conditions of detention. Whenever the interviewee appeared in difficulty, I offered to stop the interview and have a break. They all agreed to continue but I would adapt my questions according to their needs and sensitivities to the extent possible. Questions about violence were sometimes avoided or just answered by a simple "yes" or "no". In certain instances when people mentioned rape, I was cautious when asking more questions given the sensitivity of the issue.

3. Conclusion: the interviews were carried out between 9 December 2014 and 2 of January 2015. During this period of a month, around 60 people from Sudan, Eritrea, Ethiopia, Syria and Chad were informed about the report. Out of these 60 people, 70 per cent said they had been affected by different types of detention in Libya (i.e. Police detention, 'Smuggler' detention) and for varying time periods from one day to more than one year.

Faustine Douillard, one of the researchers for the study in Calais, France

2.2.5. Ethical standards

As the study was working on a highly sensitive issue and with vulnerable groups of individuals and to ensure that the resulting findings were credible and useful for policy advocacy purposes, it observed high ethical standards in order to safeguard interviewees. The key ethical principles and their implementation are as follows:

- Informed consent – Participation, especially of migrants, asylum seekers and refugees, should be voluntary and free from external pressure and based on a proper understanding of the research project and purposes.

The interviewees were informed of the purpose and scope of the interview, assured of anonymity and confidentiality, and their option to end the meeting or not answer a question. Interviews were cancelled or rescheduled in cases where the researcher felt the interviewee was not emotionally ready to discuss the issues. Interviewees were specifically asked for their consent and this was noted on the questionnaire by the interviewer. The study did not use signed consent forms, as this would not have much meaning when working with a highly transient population, and was likely also to be intimidating and off-putting for interviewees as it could be seen as bureaucratic. The study interviewed unaccompanied minors and obtained permission from care givers wherever possible; permission was obtained to interview eight minors in Sicily; in the case of the remaining minors (one in the UK, two in France and three in Malta), there was no attendant adult to ask, but the interview was made possible due to the trusted relationship between the relevant researcher who was already known and working on the ground.

- Confidentiality – The confidentiality of information, privacy and anonymity of study participants should be maintained. This covers migrants, asylum seekers and refugees as well as key informants especially in countries of focus. Data protection according to IOM's standards was upheld.

The interviews were conducted one-to-one by the researcher, sometimes with an interpreter present. The setting was as private as possible within the constraints of operating in camps and centres. The real names of migrants, asylum seekers and refugees are never used in the report and care is taken to ensure identifying characteristics are removed in reporting. Interviews with key informants were likewise carried out on a non-attributable basis. The real names of interviewees were kept confidential to the research team and redacted when the raw data was passed to the North Africa Mixed Migration Task Force agencies in order to ensure the protection of contributors.

- Do no harm – The study should ensure that the basic human rights of individuals and groups with whom it interacts are protected. This is particularly important with regard to vulnerable people such as migrant, asylum seeker and refugee children and young people.

The interviews were carried out with respect and sensitivity to avoid re-traumatising people who had suffered serious abuses. Photos/video recordings were not taken without the express consent of interviewees, especially those who were under 18.

- Objectivity – The study should be impartial, independent and credible.

Various techniques were used to check the veracity of the data collected. Migrant, asylum seeker and refugee interviews focused on detail such as ages, names, locations, times and other descriptions in order to help the researcher identify inaccuracies and ensure a focus on personal experience rather than hearsay. The questionnaire involved some repetition and clarification of information provided at different stages. The study was, however, limited in its ability to check testimonies against independent sources. The contents of the draft report were checked with key informants with experience on the ground in Libya. They enabled a top-level confirmation of the names and status of detention facilities; however, it was not possible to corroborate individual allegations or cases in this way. In addition, the study did not come across multiple migrants, asylum seekers and refugees who had been in detention in the same time and same place as inevitably people arrived in Europe through very diverse and individual routes, not as a group. As such it could not corroborate information with other interviewees who were present in the same location at the same time.

2.2.6. Data collection and analysis

The study was based on qualitative data. This involved the use of a wide-ranging semi-structured qualitative research questionnaire comprising of 85 questions. It was not expected that the interviewees could or would respond to each question in the timeframe of a couple of hours available for each interview. Rather the questionnaire was intended to promote dialogue. The study collected a mass of data of variable content, since different interviews emphasised and answered questions on different aspects. The interviews were typed up and recorded in narrative form in Microsoft Word documents.

The data so collected was manually analysed in order to identify over-arching trends and to draw out the richness of the migrant and refugee experience. The report followed the social science conventions of qualitative research in using verbal qualifiers to describe the strength of the findings.

2.2.7. Limitations

There are things that this study can say, and others that it cannot say about immigration detention in Libya. The qualitative methodology used by this report can:

- show that a consistent pattern of immigration detention is taking place in the country, which falls short of international standards. The fact that the study was carried out in multiple and disparate research sites helps verify the occurrence and characteristics of the detention experience.
- give an in-depth understanding of the nature of detention experience from the perspective of migrants, asylum seekers and refugees and yield information on personal stories and journeys.
- confirm where detention is occurring in cases where it was possible to corroborate testimonies naming the same facility with each other as well as with other sources of information.
- spotlight more detailed concerns about a small number of facilities about which multiple detainees have made similar reports (see later sections of the report). Whilst this does not confirm the facts of individual cases, it does highlight that there are issues to be concerned about in the detention centres in question.

The qualitative methodology used by this study cannot:

- inform the scope and prevalence of detention in Libya. The report did not and could not use the statistical sampling methodology necessary to extrapolate such conclusions.
- confirm specific facts and individual allegations of human rights violations and abuse. The study was too temporally and geographically dislocated from the detention events in question to be able to investigate and crosscheck such facts with other sources.

The choice of methodology and access to data and information was constrained by the following factors:

- The security situation in the region and the political sensitivities around this topic meant that a study of migrants, asylum seekers and refugees while in detention was not feasible. Ideally the subject would be best studied by access to detention facilities and interviews with those in detention. Interviews of detainees, once they had left detention in North Africa and arrived in Europe, were always bound to be the next best option as it can be anticipated that the further people are away from an experience both temporally and geographically, the harder it is to collect reliable data from them. This proved to be the case. While the study was able to gather good information on the nature of the detention experience, the emotional journey and physical hardship, it was more difficult to verify facts e.g. precise names, locations and governance of detention facilities. An important lesson learned is that alternative methodologies would be required to arrive at robust findings on specific and targeted allegations about the “when/where and by whom”-aspects of the detention experience.
- For reasons of political sensitivity, government bodies in countries of detention were not asked to participate in this study. This limited the possibility of accessing official government statistics/data, seeking comments and clarifying findings.
- The study was not able to access the experience of returnees and deportees who had been in detention and then sent back to their home country. It was therefore not possible to compare differences in the experiences of arrivals in Europe with those of returnees back home.

'...My name is Samaka and I come from rural Mali. I am 20 years old. I was born a twin but my mother died during the delivery along with my twin brother. My father died in a car accident later the same year. My uncle took me in to live with him and his wife. They did not have children and they loved me like their own son. They were poor and could not afford to send me to school. My uncle took me every day to work with him as a shepherd. My uncle died in 2012. His wife had already left him the year before. I was now alone in my uncle's house and carried on his work, tending to his 150 sheep.

One day I was grazing the sheep in the pastures when a group of Tuareg rebels appeared and killed some of them. I was very angry but couldn't do much about it as they control the area. They went away taking the dead sheep with them and came back for the following three days, killing more of my sheep each time. On the fourth day they came again and took all my sheep and then kidnapped me as well. They took me to a warehouse in Ansongo where I was held captive for five months by myself. They wanted me to join their group and fight with them but because I refused, they kept me prisoner. They gave me drugs to keep me quiet but they did not beat me. Each month a doctor came and took blood from me to give to the wounded rebels. I felt very weak as I did not have enough food to eat. I wasn't allowed to speak and the guards would threaten to kill me if I said anything at all. One night when the guards got drunk and fell asleep, I managed to escape. I didn't know where to go so I ran and ran for hours. The next morning I found myself in a big street. I was tired and very thirsty. I saw a man in a car and asked him to help me. At first the driver was scared but when I told him what had happened to me he agreed to help.

The man put me in touch with a friend of his who took me by boat along the river Niger to Niamey, the capital of Niger. I was then put in touch with another man in Agadez who transports gasoline from Niger to Libya once a month. I had to wait a month for the trip to come round. I lived with other migrants, asylum seekers and refugees in abandoned houses and survived on meals provided by volunteers. I then made the journey to Libya, hidden in the back of a truck and arrived in Sabha in April 2013. I know the journey is very dangerous but I was fortunate not to face any risks. On arrival, I got out of the truck and soon after the police stopped me and asked for my ID documents. As I didn't have any, I was taken to Sabha jail where I was detained for three months and then afterwards taken to another detention centre in Tripoli for another three months. There was no legal process, no lawyer, no judge, no opportunity to claim asylum. I could not go back to my home country but in any case they did not offer me any support to return. There were no visits from the outside world.

The detention centre in Sabha was a large building with many rooms. The detainees were all black people from different countries. They were mainly men. Women were kept separately and there were some female guards*. There were some children aged six to 15, only a few were unaccompanied. There were five people to each room. The toilets were in the rooms and there was no shower. The facility was patrolled by armed guards. We were beaten every day. We had to wear prison uniforms but could not wash or change them. We were given food once a day, pasta and bread and some drinking water. We were never allowed out of the room. There was no chance of seeing a doctor even when we were ill.

One day a general came to the camp with many armed soldiers. He spoke Arabic and I managed to understand a little of what he said. He told us that we could not stay in Libya any longer as we were not wanted there. He would take us to the sea and put us on a boat to Europe. If we tried to escape they would kill us. The guards took 90 of us and forced us on to a truck. There was a boat waiting for us at the seashore. It was too small for all of us, but nonetheless they forced us all on and pushed the boat out, saying they wished we would all die at sea. One of our group started to steer the boat but there was only 20 litres of petrol in the tank and it soon ran out. We drifted for five days without food and water. Five people died. The Italian navy then caught sight of us and came to rescue us. We were taken to Lampedusa and from then on to Palermo and Catania. I've now got a permit to stay here while my asylum claim is being assessed. I go to school every day and hope to receive international protection so that I can look for a job and start a new life in Italy....'

* The presence of female guards in Sabha was not confirmed by key informants.

This testimony was given by a 20 year old male asylum seeker from Mali detained in Sabha detention centre, Libya, in 2013. He was interviewed in Sicily, Italy in January 2015. The name 'Samaka' is a pseudonym.

3. REGIONAL CONTEXT

3.1. Population flows

Migration has long shaped North Africa, with countries in the region often simultaneously representing points of origin, transit and destination. Demographic and socioeconomic trends, conflict and, increasingly, climate change are among the multitude of factors that influence migration dynamics in the region. The migration context in North Africa can be broadly characterised as consisting of three closely interrelated patterns:²⁷

- (a) Forced migration and internal displacement as a result of multiple, acute and protracted crises across the region and in neighbouring regions, particularly in Eritrea, Iraq, Libya, Somalia, Sudan and the Syrian Arab Republic;
- (b) Complex irregular migration flows, driven by a mix of economic and other factors, within and transiting through the region, particularly to and through North Africa and towards Europe; and
- (c) The movement of (regular and irregular) labour migrants both within and from far beyond the region, with Gulf countries acting as the principal magnet for migrant labour.

The mixed nature of these migration flows means that different types of migrants, asylum seekers and refugees are moving along the same routes for different reasons passing through a number of countries and being exposed to various risks along the way. Sometimes they resort to the same smuggling networks. This makes the differentiation between the people moving in these flows as well as the consequences even more complicated and interwoven. The two main migration routes to Libya and then on to Europe are the East and North African Routes (see Box 4). In general terms, migrants, asylum seekers and refugees typically experience some level of abuse and a breach of their human rights on their migratory journeys across the region. However, the extent of the problem is hard to determine as most do not report these abuses and are unable to or cannot seek avenues for redress. Gaps in legal frameworks and implementation across the region may result in legal insecurity for migrants, asylum seekers and refugees and exposure to arbitrary detention, harassment and other violations.

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²⁷ IOM website, 2015.

MIGRATION ROUTES THROUGH LIBYA

BOX 4

The East Africa Route

• The East Africa route is followed by Sudanese, Ethiopian, Eritrean and Somali migrants and asylum seekers. Somalis and Somalilanders make their way to Addis Ababa where they join Ethiopian migrants and also Eritrean migrants who come via Asmara or Massawa. From Addis, the migrants move to Khartoum where they change 'smugglers' and make the final leg of the journey to Kufra, Libya. This final leg requires 4-10 days in the Sahara and is consequently quite risky and also expensive. Most stages of this journey require a 'smuggler'. Since the 2011 conflict, clashes between the Tebu and Zway in Kufra have decreased flows into this region and most 'smugglers' now take groups via Tazerbo in order to avoid the region. Some asylum seekers spend time in the refugee camps in Sudan but Ethiopians and Eritreans are concerned that spies from their governments monitor the camps and so do not stay for long. Other asylum seekers are pushed out by the encampment policy in Sudan, which prevents them remaining there and building a life. Often 'smugglers' are also used to move them on from the camps to Khartoum. Many spend some time working in Khartoum in order to make money for the next leg of the journey. There is a new route emerging through Egypt, where Sudanese migrants make their way to Cairo (usually by plane) and then connect with 'smugglers' that take them to the Libyan border at Salloum-Um Saad.

Routes through Niger

• Routes through Niger are common for West and Central African migrants. Depending on where they start their journey, migrants take different routes that end in either Mali or Niger, from where they continue to Libya, either directly or through Algeria. From Mali, they have the choice of either going southeast through Niger or directly north through Algeria. The journey from Bamako to Tamanrasset involves crossing the desert, which makes it difficult. But crossing the border into Algeria is easy for Malian passport holders and many buy false Malian passports on the market to facilitate their travel. For those that move through Niger, they travel by bus to Agadez (facilitated by the ease of movement within the ECOWAS region), which has become a major 'smuggling' hub, and from there connect with 'smugglers' that take them to Libya. The journey is conducted in stages and migrants typically pass through Dirkou, Madama, Al Wigh, Ghatrun, and Murzuk, often changing 'smugglers' for each leg. Some travel through Algeria to get to Libya, instead of entering directly from Niger. Many spend time in Tamanrasset to make money for the next leg of the journey. This route is quite risky, given the presence of groups attacking convoys and executing kidnappings and given the harsh terrain (it involves crossing the desert). Consequently, it is quite expensive.

There is a relatively minor route from Chad to Libya, which takes Chadians, Western Sudanese, and Cameroonians from Ndjamena to Sabha.

Once within Libya, most migrants head north to cities with better employment opportunities (Tripoli, Benghazi) or to the coastline where they board boats to Europe. The journey from Sabha to Tripoli involves a number of checkpoints, which is why it is usually undertaken with a 'smuggler'. Despite this, however, there are very few reports of detention or deportation along this road. The journey from Kufra to Benghazi or Tripoli can be undertaken by bus for some portions, but requires a 'smuggler' for other portions. This route passes through Ajdabiya and the road from Ajdabiya to Tripoli tends to be particularly problematic as many migrants report being detained there.

For those wishing to move on to Europe, smugglers organise boats that leave from the Libyan coast, somewhere between Tripoli and the Tunisian border. [Other points of departure are around Khoms/Misratah which are both east of Tripoli]

Source: UNHCR/Altai Consulting, 'Mixed Migration: Libya at the Crossroads - Mapping Of Migration Routes From Africa To Europe And Drivers Of Migration In Post-Revolution Libya

3.2. Detention practices

This section gives a short overview of the detention situation in the North Africa region as a whole. The study was intended to prioritise Libya, Egypt and Sudan and also consider Algeria, Mauritania, Morocco and Tunisia. However, a comprehensive picture of the scope and prevalence of immigration detention practices in all countries is lacking.

The primary data collected by this study found that 48 out of 51 cases involved detention in Libya. Three cases involved exclusive detention in other countries; two in Egypt and one in Morocco. Libya therefore became the focus of the study as there was too little information on the other countries to arrive at a general conclusion. Despite conscious efforts, it was not possible to find sufficient numbers of people who had been detained in other countries apart from Libya. This was partly due to the research sites, as Malta and Sicily/Italy are likely routes for people coming from Libya, whereas those transiting from other North African countries may travel via Spain, Greece or elsewhere. However, if it was simply a question of route, the study might have expected more detention cases from a variety of countries in Calais/France as people following different journeys eventually end up there. In fact the only cases relating to Egypt and Morocco were found in Malta and Sicily/Italy. An alternative explanation is that those detained in other North African countries are deported back to their countries of origin; the study did not have access to the experience of returnees and cannot say therefore if that would change the detention picture in the region. Whatever the comparison with other countries, the scale of immigration detention taking place in Libya is a matter of serious concern and covered in the next chapter. This section summarises available information on the rest of North Africa.

Countries in the region are subscribed to key international instruments relating to the protection of migrants, asylum seekers and refugees from detention and other human rights violations (see table 4). All are party to the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights, which provides the basis for the right of all human beings to liberty and freedom from arbitrary detention.

Table 4 International detention standards applicable in the region²⁸

Treaty	Algeria	Egypt	Libya	Mauritania	Morocco	Sudan	Tunisia
International Covenant on Civil and Political Rights, 1966	Y	Y	Y	Y	Y	Y	Y
Convention on the Elimination of all Forms of Discrimination against Women, 1979	Y	Y	Y	Y			Y
Convention on the Rights of the Child, 2000	Y	Y	Y	Y	Y	Y	Y
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990	Y	Y	Y				
United Nations Convention (1951) and Protocol (1967) relating to the Status of Refugees.	Y	Y		Y	Y	Y	Y

²⁸ This table lists the ratification status of key human rights treaties. Further details of dates of signature, accession, ratification and succession are available at University of Minnesota, Human Rights Library database, available at <https://www1.umn.edu/humanrts/research/ratification-index.html#A>

A review of secondary sources shows that the use of immigration detention has been raised by human rights observers in relation to all countries in the region to some extent. There is primary data from this study relating to two countries (Egypt and Morocco) but the very limited number of cases means that it is not possible to arrive at any general conclusions from this information.

Algeria: The UN Committee on Migrant Workers in 2011 criticised Algerian legislation for allowing the indefinite detention of irregular migrants and the authorities for failing to investigate reports of collective expulsions.²⁹ Other reports suggest that procedural safeguards do exist for limiting the period of detention and providing protection to some categories of foreign nationals awaiting expulsion.³⁰

Egypt: In recent years, the detention of persons, including children, fleeing the Syrian Arab Republic and Palestine has been a particular issue³¹ with the authorities said to use a network of centres and police stations in Alexandria and the surrounding region to support such operations.³² UNHCR statistics from January to November 2014 indicated that 2,924 people, mostly of Syrian origin, were arrested, of which 230 were subsequently detained by the Egyptian authorities.³³ Human rights groups have repeatedly criticised the country for arbitrarily detaining non-citizens, denying them basic due process rights such as access to appeal, indefinitely detaining stateless persons and unregistered asylum seekers and preventing ICRC, UNHCR and other bodies from accessing detainees.³⁴ This study only came across three instances of detention in Egypt (two exclusively in Egypt) either because most of the sample did not pass through there or because those that were in Egypt had regular status and left before their visas expired. In these cases, a legal process was followed and access was granted to a lawyer but opportunities to apply for asylum were lacking. The three former detainees gave mixed reports of treatment by guards ranging from positive comments to allegations of brutality. They all described basic detention conditions with inadequate food, sanitation and sleeping arrangements and a lack of access to medical treatment. One of these cases involved a minor detained with her family. These testimonies are included for illustration purposes and no generalisations can be drawn from them.

Mauritania: Criticisms were raised in the late 2000s by various human rights groups of poor conditions at an immigration detention centre in the port city of Nouadhibou, nicknamed “Guantanamo” by detainees, which was housing mainly Senegalese and Malian foreign nationals sent back from Europe.³⁵ Current trends are not known but concerns continue to be raised in international fora about detention conditions in Mauritania.³⁶

Morocco: Detention of migrants emerged as a major issue in the 2000s with concerns that the readmission agreements with the EU were exacerbating the problem of immigration detention in the country.³⁷ The Council of Europe and the European Parliament have both stressed that readmission agreements should operate in accordance with international human rights standards, which includes the rights of irregular migrants and asylum seekers inter alia to liberty and freedom from arbitrary detention, and protection against torture or other ill-treatment.³⁸ Recent human rights concerns focus on the violence used by Moroccan forces during interception and expulsion operations³⁹ and the detention of non-nationals, including unaccompanied minors, in police cells as part of that process.⁴⁰ A reform process of national policies towards migrants, asylum seekers and refugees was launched in 2013 in response to such criticisms.⁴¹ This study found one case in Sicily/Italy of a migrant experiencing detention in Morocco which showed the detention of a minor in inadequate conditions and without due legal process followed

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29 Cited in Amnesty International, 2011. Note that more recent Amnesty International Annual Reports on Algeria do not cover issues facing migrants, asylum seekers and refugees.

30 Migration Policy Centre, 2013.

31 Human Rights Watch, 2014; Beaumont and Kingsley 2014.

32 Human Rights Watch, 2015; Rollins, 2014.

33 UNHCR, 2014.

34 See various sources cited in Global Detention Project – Egypt profile. <http://www.globaldetentionproject.org/countries/africa/egypt/introduction.html>

35 Migration Policy Centre, 2013.

36 Global Detention Project, 2014.

37 Conseil Consultatif des Droits de l'Homme (CCDH). 2006.

38 Human Rights Watch, 2014, p.10.

39 Human Rights Watch, 2015.

40 Human Rights Watch, 2015.

41 Human Rights Watch, 2015..

by a summary removal to the Algerian border. This case is included for illustrative purposes only. This study cannot generalise on the basis of one case though it should be noted that it is in line with the findings of recent human rights reports.⁴²

Sudan: There is little information available on the detention of migrants, asylum seekers and refugees specifically. Arbitrary detention is a key human rights concern in the country with reports of opposition leaders and ordinary citizens being detained without due process as political prisoners for participating in mass demonstrations.⁴³

Tunisia: Detention facilities, supported as part of readmission agreements with European countries, have existed since the 1990s. Civil society groups are concerned that the “Mobility Partnership” concluded between Tunisia and the European Union in March 2014 paves the way for the establishment of a readmission agreement and may lead to increases in the number of non-citizens being returned by the EU and then detained in Tunisian detention centres.⁴⁴ There are said to be a dozen dedicated immigration detention centres but access to these facilities by human rights groups remains very limited except for the ICRC, which is authorised to carry out confidential visits to all facilities holding humanitarian detainees including foreign nationals.⁴⁵ In 2012, the ICRC reported that prison conditions were improving.⁴⁶

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42 op cit.

43 Human Rights Watch World Report, 2015, op cit. See also HRW World Report 2014 op cit.

44 Global Detention Project, 2014.

45 International Committee of the Red Cross, 2012.

46 International Committee of the Red Cross, 2012.

...I am Ali. I am 23 years of age and come from a city in South Somalia where I was living with my wife, my father and four siblings. I used to make a living out of transporting water to neighbouring villages on a donkey cart. The place where I was living was attacked and taken over by Al Shabab (Islamic militant group) and many people were killed. One day I was going about my business as usual when two policemen apprehended me and took me to the police station. They kept insisting that I was a Christian. I denied it. They then took me to see my father who got very angry and also denied the accusations. I escaped while they were all arguing and spent three days away from home. When I went back, my neighbours told me that some masked people had returned to my family home and shot dead my father and three siblings. I fainted when I heard this news and was in a state of shock for days. The rest of my family said I should get away as the militants were looking for me. I was worried about what had happened to my wife and later found out that she was fine.

My aunt gave me money to leave the country with my seven year old brother. We went to a refugee camp in Kenya and lived there with my father's friends from our home town for over a year. Then one day out of the blue, I got a call out from a man who said, "I know you, we are Al Shabab, you are Ali. We know you are living in Christian country, in Kenya. We will catch you as soon as possible". I had no choice but to leave, my friends and family collected some money to help me. I went to Uganda for a couple of days, then to Sudan for several days and on to the Sahara desert. Problems started when we got to the border with Libya. I was in a group of 30 people from different countries by that time. We were attacked by a group of Libyans; they hit us with guns and sticks, raped two of the women in front of everyone, and ran off with all our money and possessions. We were also stopped by smugglers who demanded money, USD 2000, at gun point and said they would call the police if we didn't pay up. They gave us phones to call our relatives for the money. I called my aunt and she managed to gather together enough money for me. Others did the same. The smugglers took the money and abandoned us, calling the police as they did so. The police then turned up and took us to a detention centre for being in Libya without documents.

It was November 2012 and I remained in detention for nine months until my release in August 2013. I was kept in an underground facility known as 'Duishi' in Tripoli. No lawyers or agencies visited us. There was no chance to claim asylum and I was not offered support to go back. I couldn't go back to Somalia but Uganda and Sudan may have been options as I did not have any problems there. The police said we could be released if we paid USD 2000. Some people had the money and were able to leave. I didn't have any money as my aunt had already used up her resources on previous occasions.

We were kept in a big building, I think there were 500 people in all. The room I was in was crammed full of 50 to 70 people from various countries, Sudan, Chad, Egypt, Bangladesh, and Burkina Faso. Women were kept separately with children. I don't think any of the children were unaccompanied. I didn't see any police women. The guards had weapons and beat us every day. They made us take off our clothes, lie down and then they beat us. We were given some bread and a small glass of water once a day. We were only taken outside once a week on Fridays. We couldn't run or do exercise as the guards might think we were trying to escape so we were brought back in after 20 minutes after hardly being able to move about at all. The toilets were inside the rooms and in very bad condition. We had to wear the clothes we arrived in for the whole time we were there. We were not given any new clothing. Everyone had one blanket each. I slept on the floor, with the blanket wrapped around me, sleeping on half of it and using the other half to cover my body. It was difficult to get any sleep because of the stress.

I was fine before entering the facility but got sick once I was there with a skin condition that everyone was suffering from, "Yes I was sick, there is a lot of skin problems, itching...one day the doctor he come to me, he give me medicine then he left". The medicines didn't work and eventually the police just let me go because of the illness, "The infection in my body increased day by day and then it was serious and they say "go" the police.."go outside" yes so bad.. and no no pay because I had no money". I met some Somali people after leaving the detention centre who were planning to get a boat to Europe. I stayed with them; they helped me and got me some medicine for my skin condition. I was longing to go to a safe place, I didn't mind where and was thinking of going back to Sudan when I heard about the journey awaiting us on the boat to Europe, "the sea is 50:50 if you die or you survive". The smugglers wanted USD 1000 for the journey across. I didn't have the money and the group collected USD 400 for me and the smugglers accepted. We were at sea for two days and then landed in Malta. I have now been in Malta for over a year, I work sometimes but mostly I'm unemployed. I attend language classes and am looking to further my studies, "... the only problem I feel is that I lost my family..when I remember I feel a lot of stress.. sometimes when I was sleeping in the night I remember a lot about Libya..the police killing me, then I wake up. Ya ya bad dreams"...

This testimony was given by a 23 year old male asylum seeker from Somalia who was detained in a detention facility which he called 'Duishi' in Tripoli 2012 to 2013. He was interviewed in Malta in December 2014. The name 'Ali' is a pseudonym.

4. DETENTION IN LIBYA

4.1. Migratory patterns

Libya has long been an important destination for many people from Sub-Saharan Africa given its relative prosperity to its neighbours, as well being a transit country en route to Europe. Estimates from 2009 suggest that Libya had an undocumented population of more than 1 million⁴⁷ prior to the 2011 conflict. The country has been a sub-regional magnet for labour migration and dependent on migrant labour as an economy through policies pursued by the Gaddafi regime.⁴⁸ It was a destination for many years for people coming from countries in Sub-Saharan Africa, North Africa and the Middle East (especially for Egyptians, Tunisians and Sudanese)⁴⁹ and as far afield as Asia.

It has also long been a staging post for onward journeys to Europe. Libya has been party to agreements with various European countries regarding the management of migration flows in exchange for funding, including support to the expansion of Libya's detention structure. Such policies have attracted much criticism from human rights groups and international organizations both towards European countries and Libya⁵⁰ prior to the 2011 conflict on the grounds that they have contributed to poor detention conditions, corruption, and prevalence of smuggling rings which have led to scores of undocumented migrants, asylum seekers and refugees dying in perilous journeys to and from the country, in the Sahara desert and in the Mediterranean.⁵¹

The 2011 conflict disrupted these patterns with many migrants summarily forced to flee to neighbouring countries or return back to their home countries.⁵² More than three years on, migrants are again making their way back to Libya.⁵³ It remains a relatively prosperous country compared to its neighbours, having achieved upper middle income status, with an estimated population of 6.25 million⁵⁴ and a ranking of 55 out of 185 on the Human Development Index (HDI) with a score of 0.7842,⁵⁵ although living standards have declined since fighting broke out in 2014. Libya's economy is primarily based on its extractive sector, which accounts for 99 per cent of the government's income. Migrant workers originate partly from North African countries such as Egypt, Tunisia and Morocco, and partly from Sub-Saharan Africa, primarily from Chad, Nigeria, Mali and Ghana. Despite the current crisis, many new migrant workers continue to arrive in Sabha, Tripoli, Az-Zawiyah, and Ajdabiya,⁵⁶ and the countries from which they come are increasingly varied.⁵⁷

Libya is also home to a community of asylum seekers who have a precarious legal status since the country does not officially recognise asylum seekers and refugees. As of July 2014, 37,000 refugees and asylum seekers were registered with UNHCR in Libya but many of these may have left the country after fighting commenced. According to UNHCR, the absence of an asylum law means that clear protection safeguards for refugees and asylum seekers are not in place. Beyond the necessary legislative framework, the Libyan government lacks an implementation framework, including the absence of an asylum system at the procedural level setting out agreed practices towards those people registered with UNHCR. Asylum seekers and refugees are at risk even if they carry attestation papers showing they have been registered with UNHCR. However, even in the current chaos, UNHCR reports that it is still able to prevent individuals of concern from being taken into detention and that it is able to help facilitate the release of such persons as well. For migrants, there is no corresponding migration system to regularise their status, obtain identity documents and ensure their protection in Libya as temporary residents.⁵⁸

A 2013 survey consisting of 1031 respondents found that half of the non-nationals in Libya wanted to

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47 UNHCR. Website. "Libyan Arab Jamahiriya." <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e485f36> (accessed 14 October 2009) as quoted in Global Detention Project. 'Libya Detention Profile', last updated in 2009 and available at <http://www.globaldetentionproject.org/countries/africa/libya/introduction.html>

48 Lindley, 2014.

49 RMMS, 2014.

50 Human Rights Watch, 2009.

51 Global Detention Project – Libya profile, n.d.

52 Naik and Lazcko, 2013.

53 RMMS, 2014.

54 World Population Review, n.d.

55 UNDP, 2013.

56 IOM et al. 2014, pg 11.

57 RMMS, 2014.

58 RMMS, 2014.

remain there.⁵⁹ They are willing to stay if the security situation remains stable and this is especially the case for Iraqis, Palestinians, Sudanese and Syrians who have longstanding ties and communities in Libya. However, the growing instability since 2014 is having a noticeable impact and Libya's role as a transit rather than as a destination country is taking on a more prominent role.⁶⁰ Refugees/asylum seekers that met during an inter-agency assessment mission in 2014 said that they were considering a move out of Libya if the situation does not improve, particularly to Europe. Main security concerns among migrants, refugees and asylum seekers alike include violent random clashes, the spread of weapons, and the fear of robberies, shootings and kidnappings.⁶¹

Record numbers of migrants and asylum seekers are embarking on the perilous sea journey from Libya to Europe with 170,000 reaching Italy alone in 2014.⁶² The Italian navy's rescue operation, Mare Nostrum, rescued around 100,000 from unseaworthy boats, but at least 3,000 still perished at sea.⁶³ The concerns expressed in the past about Libyan policy towards migrants and asylum seekers continues to be reiterated today with recent human rights reports documenting the harassment of non-nationals by militias, arbitrary arrests by militias and government forces, and forced labour by criminal gangs and militias.⁶⁴

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59 Danish Refugee Council, 2013.

60 AFP, 2015, Article says a total of 5,302 migrants have arrived in Italy from Libya since the start of January (2015), a 59 percent increase on the same period in 2014.

61 Information in this section is taken from the recent inter-agency rapid assessment of Libya unless otherwise stated - WFP et al, 'Libya Interagency Rapid Assessment, December 2014', <http://www.wfp.org/content/libya-interagency-rapid-assessment-december-2014>

62 IOM, 2015.

63 Brian and Laczko, 2014; Human Rights Watch, 2015.

64 Human Rights Watch, 2014.

4.2. Political context⁶⁵

Since the outbreak of the Libyan conflict in 2011, successive transitional governance arrangements have been unable to establish a stable political and security environment and extend the full authority of the central government throughout the country. Political volatility has continued to characterise the country, with continued incidents and clashes between armed factions and groups organised along tribal, regional and/or political lines. Conflict flared up in May 2014 with the launch of the government's "Operation Dignity" and its proclaimed aim of evicting Islamist militia groups from eastern Libya. The crisis gained momentum when the Islamist-leaning political parties lost a number of seats in the June 2014 parliamentary election. Militias from Misrata, Tripoli, Az-Zawiya and other localities launched "Operation Dawn" and initiated assaults on the airport in Tripoli and other strategic areas in an effort to regain some of the power lost due to their election defeat. Furthermore, the political polarisation intensified as the General National Congress (GNC) was re-invigorated in Tripoli as "Operation Dawn" took control of the city, while the elected House of Representatives was operating out of Tobruk in the eastern part of the country. From September through November 2014, the fighting intensified in Benghazi and Jabal Nafusa, while relative calm returned to Tripoli. At the time of writing, armed hostilities continued against the backdrop of continual political crisis with the two rival camps, each backed by armed groups, struggling for power and legitimacy.

The political crisis and escalation of violence in Libya since May 2014 has led to civilian casualties, massive displacement as well as the destruction of private property and public infrastructure and the disruption of basic services and social protection systems. UNHCR estimates, on the basis of the reports from local crisis committees, that the total number of displaced people has risen to 393,420 persons as of November 2014.⁶⁶ It is further estimated that two million people, almost one-third of the total population in Libya, may have been affected by the conflict due to the disruption of basic supplies and services including food, fuel, water, and medical supplies, as well as electricity, gas, health care and public services.⁶⁷ Due to the ongoing violence and highly volatile situation, humanitarian access has been extremely limited, as UN agencies, donors and international NGOs have evacuated staff to neighbouring countries, e.g. Tunisia and Malta. International staff have not yet returned but a number of agencies have re-established themselves to continue operations from a remote management setting. Despite the escalation of conflict in Libya and allegations of the widespread and systematic human rights abuses towards migrants, asylum seekers and refugees, migration flows into the country continue.

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65 IOM et al., 2014

66 UNHCR, 2014d.

67 UNHCR, 2014b.

4.3. Management of irregular migration⁶⁸

Pre- and post- 2011 conflict governments have publicly stated that irregular migration is a priority. The new government, which came to power in 2011, said that increasing border security in order to combat irregular migration, trafficking in arms and drugs, and organised crime was a top priority. A number of bilateral agreements exist between Libya and other countries.

- There have been cooperation agreements between Libya and Italy on combating irregular migration since 2000. The 2008 “Friendship Pact” between Italy and Libya, included an agreement to collaborate on the return of boats intercepted on international waters (or so-called ‘push-backs’). Although the Transitional National Council reaffirmed the Pact in December 2011, the European Court of Human Rights pronounced in the Hirsi case, in February 2012, that the pact between Italy and Libya was in violation of the European Convention on Human Rights as returning concerned persons to Libya exposed them to the risk of ill-treatment and possible further repatriation to their countries of origin.⁶⁹ The agreement was therefore suspended. Even prior to the court ruling, the agreement had been partially de-facto suspended due to difficulties in implementation. Nevertheless, in April 2012 migration cooperation between Italy and Libya was reinforced through an agreement on training programmes, the detention of migrants, and voluntary return programmes.⁷⁰ The UN Special Rapporteur on the Human Rights of Migrants expressed concern that this new framework contained little concrete information on strengthening Libya’s normative framework and institutional capacities regarding the human rights of migrants.⁷¹
- Throughout 2012, Libya increased cooperation with France to secure borders.
- In December 2012, Libya made agreements with Algeria, Niger, Chad, and Sudan to secure borders and setup joint border forces.
- Libya is working with other neighbours, Tunisia and Egypt, to secure borders.
- Libya has also been cooperating with the EU, and receives funding for several initiatives including the fight against trafficking and assistance in voluntary return and reintegration from Libya to the respective origin countries. In 2013, the EU renewed its interest to commence initiatives to secure Libyan borders. With regards to readmission agreements involving European States and Libya as well as other countries, the Council of Europe and the European Parliament have both stressed that readmission agreements should operate in accordance with international human rights standards, particularly in relation to asylum seekers and refugees in need of protection under the 1951 Geneva Convention or migrants whose return to a destination country would expose them to the threat of cruel or inhuman and degrading treatment.⁷² A number of EU projects have been suspended or adapted due to the ongoing political crisis and security situation.

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68 Information in this section is from Migration Policy Centre, 2013b.

69 European Court of Human Rights, 2012.

70 Information in this section is from Migration Policy Centre, 2013b.

71 Frenzen, 2012.

72 Human Rights Watch, 2014a, .p.10.

4.4. Legal and administrative framework on arrival in Libya

Libya has acceded to a number of international human rights instruments,⁷³ including key treaties relevant to the protection of migrants from arbitrary detention as well as commitments to various treaties concerned with forced labour, trafficking, and smuggling as well as regional conventions under the African Union. Table 5 lays out the treaties to which Libya has made a commitment through signature, ratification or accession. A number of Libya's international human rights obligations are reflected in subsequently enacted domestic legislation, such as the Great Green Charter of Human Rights in the Jamahiriya of 1988⁷⁴ (abolished after the 17 February 2011 overthrow of Gaddafi). Various reports continue to express concern over the implementation of Libya's international legal obligations, in particular, as related to civil and political rights. The main issue at this point in time is that despite the fact that Libya has subscribed to various international human rights standards, there is no clear authority responsible given the breakdown of law and order in the country and the control of the internationally 'recognised' authority of only a part of the country.

The lack of asylum safeguards is a gap. Libya is not a signatory to the 1951 Convention relating to the Status of Refugees, and thus not bound by it. However, Libya is party to the Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa (1969) and thus in effect adheres in spirit to the 1951 Refugee Convention. The main issue is the lack of an implementation framework. No domestic asylum legislation has been adopted, and there are no national asylum institutions and processes. References to asylum in domestic legislation were made in Article 11 of Libya's Constitutional Declaration of 1969⁷⁵ and the Constitutional Declaration of the Transitional National Council post the 2011 armed conflict. However, despite efforts since the 2000s to translate this into domestic legislation, no statute has yet been passed. In the absence of a national asylum system, all asylum-related activities are carried out exclusively by UNHCR and its partners. This includes the examination of any requests for international protection pursuant to UNHCR's mandate. The absence of a cooperation agreement between UNHCR and the Libyan Government formally establishing UNHCR's presence and operations in the country has meant that UNHCR's operating environment remains largely unpredictable, and the execution of its protection functions ad-hoc and unsystematic.⁷⁶

Entry into Libya is regulated by Law No. 6, Regulating Entry, Residence and Exit of Foreign Nationals to and from Libya of 1987. The Law prescribes those persons violating Libya's legislative entry provisions are subject to fines and imprisonment of up to three months. Thus a prison sentence and fine are applicable to the facilitation of irregular entry to the territory and to irregular stay or entry, preceding deportation. This law also stipulates the grounds for the deportation of foreign nationals, including entry without a visa and overstay without a valid residence permit. In reality, very few asylum seekers enter the country through the airports and other official border entry points with valid documentation. The majority enter the country through irregular means.⁷⁷

Individuals wishing to apply for asylum in Libya may approach UNHCR's representatives in Tripoli or its sub-office in Benghazi, where their protection needs and status are determined in accordance with UNHCR's mandate. Given the evacuation of UNHCR staff in 2014, the already precarious situation of those wishing to apply for asylum is further undermined, although remote operations continue and several of UNHCR's partners in Libya continue to work on the ground.

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73 These include: the International Convention on the Elimination of All Forms of Racial Discrimination (in 1969), the International Covenant on Economic, Social and Cultural Rights (1976), the International Covenant on Civil and Political Rights (1976), Convention on the Elimination of All Forms of Discrimination against Women (1989), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1989) and Convention on the Rights of the Child (1993). In 2004, Libya also signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. Libya has also acceded to the United Nations Convention against Transnational Organized Crime, and its two Protocols on migrant smuggling and human trafficking.

74 Great Green Charter of Human Rights of the Jamahiriya Era (Libyan Arab Jamahiriya), 12 June 1988, <http://www.unhcr.org/refworld/docid/3dda540f4.html>. The principles of the Charter are supposed to be incorporated into every law in accordance with the Law No. 5 of 1991 on Implementation of the principles of the Great Green Charter for human rights in the Jamahiriya era. (Libyan Arab Jamahiriya), July 1991, <http://www.unhcr.org/refworld/docid/3defab9f2.html>

75 Constitution Proclamation (Libyan Arab Jamahiriya), 11 December 1969, <http://www.unhcr.org/refworld/docid/3ae6b5a24.html>

76 Submission by the Office of the United Nations High Commissioner for Refugees in the Case of Hirsi and Others v. Italy (Application no. 27765/09), p.5. <http://www.refworld.org/pdfid/4b97778d2.pdf>

77 UNHCR, 'Submission by the Office of the United Nations High Commissioner for Refugees in the Case of Hirsi and Others v. Italy, op cit

In the absence of a legal framework, different policies are adopted towards various groups of people in need of international protection. For instance, in 2013, the Ministry of Interior allowed Syrian nationals to confirm their status as asylum seekers to enable UNHCR to register and provide them with access to medical and educational services.⁷⁸ By contrast, the situation of asylum seekers and refugees of Sub-Saharan origin remains precarious. They are given no access to basic services and remain at risk of being detained because of their immigration status.⁷⁹ In the absence of national asylum legislation and procedures, asylum seekers attempting to enter Libya in an irregular manner are considered “illegal migrants” [sic] as defined by Libyan law and subject to detention in “alien holding/accommodation centres” in accordance with the provisions of Law No. 6. For those who are irregular migrants, the provisions of the law such that it is, are not applied.

Table 5 Libya’s commitments under international human rights treaties⁸⁰

International Bill of Human Rights	Signature	Ratification	Accession	Succession	Entry into force
International Covenant on Economic, Social and Cultural Rights			15 May 1970		
International Covenant on Civil and Political Rights			15 May 1970		
Optional Protocol to the International Covenant on Civil and Political Rights			16 May 1989		
International Convention on the Elimination of All Forms of Racial Discrimination			3 Jul 1968		
Convention on the Elimination of All Forms of Discrimination against Women			16 May 1989		
Optional Protocol to the Convention on the Elimination of Discrimination against Women			18 Jun 2004		
United Nations Convention against Transnational Organized Crime	13 Nov 2001	18 Jun 2004			
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime Preamble, supplementing the United Nations Convention against Transnational Organized Crime	13 Nov 2001	24 Sep 2004			
Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime	13 Nov 2001	24 Sep 2004			
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery			16 May 1989		
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others			3 Dec 1956		
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment			16 May 1989		
Convention on the Rights of the Child			15 Apr 1993		
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts			29 Oct 2004		
Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour			4 Oct 2000		

78 Amnesty International, 2013, p.9.

79 Amnesty International, 2013, p.9.

80 Updated treaty information available from University of Minnesota, Human Rights Library <http://www1.umn.edu/humanrts/research/ratification-libya.html> (accessed on 2/3/15)

International Bill of Human Rights	Signature	Ratification	Accession	Succession	Entry into force
Convention concerning Forced or Compulsory Labour		13 Jun 1961			
Abolition of Forced Labour Convention		13 Jun 1961			
Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families			18 Jun 2004		
African [Banjul] Charter on Human and Peoples' Rights		19 Jul 1986			
Convention Governing the Specific Aspects of Refugee Problems in Africa	30 May 1985		25 Apr 1981		
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	5 Nov 2003				
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	9 Jun 1998	19 Nov 2003			
African Charter on the Rights and Welfare of the Child	9 Jun 1998	23 Sep 2000			

4.5. Detention arrangements

There is no official list available of Libya's immigration detention facilities. Estimates from 2013 and 2014 indicate that there are 24 to 38 detention centres throughout Libya run by the government or autonomous militias.⁸¹ Some of these facilities are described as "alien holding/accommodation centres".⁸² The types of facilities vary from prisons, informal camps, police cells, to specialised centres. Libya has a number of dedicated immigration detention centres. This is unlike other countries in the region such as Morocco and Egypt, which tend to use prisons or police stations for immigration detention, and possibly due to the long-term European involvement in Libyan migration management.

After the 2011 conflict, militias took over some detention centres and operated them without official oversight. By mid-2013, the relevant government body, now known as the Directorate for Combating Illegal Migration (DCIM), had regained control of many facilities formerly run by militias, and was planning to renovate some facilities. Under current Libyan law, irregular entry or stay is punishable by imprisonment and a fine of at least 1,000 Libyan dinars, preceding deportation. To enforce national law and facilitate deportations, DCIM has administered a number of "migrant retention centres" and temporary holding facilities as a form of border control. These detention centres are headed by a director who reports to DCIM.

A number of DCIM facilities were closed in 2014, particularly in southern Libya, due in part to the outbreak of conflict and in part to lack of funding from central government. IOM reported, in August 2014, that while most centres were still operational, DCIM officials at headquarters were working from their homes and that it was impossible for them to monitor the situation in detention facilities purportedly under their control.⁸³ It is worth noting that the situation remains fluid. Some detention centres have severe resource shortages and have released detainees en masse. A number of centres, which were closed between August and December 2014, are slowly starting to re-open, according to key informants.

The information available as of May 2015 indicates that there are at least 34 detention facilities in the country, 18 of which are managed by DCIM and the authority in charge of the remaining 16 being unknown. In addition, 13 of the DCIM centres are currently operational while the remainder are closed or have an uncertain status as shown in table 6 below. The names of these detention centres are spelt differently in various documents and the alternate spellings are given here. International agencies including the UN, IOM, IMC, DRC and ICRC have access to visit some immigration detention centres and key informants confirmed that visits had taken place in 2013 and 2014 to the detention centres marked with an asterisk in table 6. Earlier reports from 2014 also mentioned that DCIM was managing additional detention centres: Souq Alhadika (Benghazi) and Al-Bayda and Mughrabi-Talhami and that militias were in control of detention facilities in Ganfouda and Tripoli zoo.

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81 Migration Policy Centre, 2013b.

82 Human Rights Watch, 'World Report, 2015 - Libya'.

83 Global Detention Project, 2015b.

Table 6

Current status of immigration detention centres

Authority in charge	Detention centre currently in use	Detention centre currently non-operational or closed	Operational status unknown
Detention facilities managed by DCIM	Aburshada/Burshada/ Abu Rashada/ Bou Rashada (Gheryan/Gheryan city)*; Abu Salim/Abu Saleem/Abu Sleem (Tripoli)*; Ain Zara (Tripoli); Benghazi/Binghazi (Tokra); Brak Shati/Burak Shati/Brak Alshati/Shati*; Kararim/Al Karareem (Misratah)*; Kufrah/Kufra/Alkufra (South); Qatrun/Algatroun/Qatroun; Surman/Soroman* (Near Al-Zawiyah); Tubruq/Tobruk/Tobroq; Twaisha (transferred to Alzawyah and Abu Salim)/ Tuwaysha/Tweisha*; Zawiyah/Al-Zawiyah (North-West); Zeliten/Zliten/Zlitan/Zelita.	Al-Hamrah/Alhamra (Gheryan/Gheryan city); Khums/Khoms/Alkhoms (Between Tripoli and Misrata)*; Sabha/Sebha*; Sobratah/Sabratah*; Zuwarah.	
Detention facilities managed by unspecified parties	Al-Jufra/Jufra; Gwea/Algwayaa/Al Guweyah (Garabulli city); Tarhouna/Tarhuna.	Ajdabiya*; Al-Fellah; Aj-Jmayl; Ghudamis/Ghedamis; Tajura; Sirt.	Alqua'ah Al-Quwea; Al Marj; Bin Ulid/Ben Watid; Durj; Ghat; Jadida; Janzur.

Key:

- Name in brackets indicates location
- Asterisk* marks centres reported to be visited by international agencies in 2013 and 2014 according to key informants.

As noted earlier, the focus of this report is on detention by the 'State' that in the context of Libya refers to the governing authorities whether they are the recognised government or de facto authorities in control of different parts of the country. The report is not about 'unofficial' detention by smugglers and traffickers. However, the potential for overlap and possible collusion of officials with criminal networks is evident. A recent study points to the involvement of some Libyan officials and local militia groups in smuggling networks, for example, due to the practice of detention centre guards who offer to facilitate people's release from detention on the promise that they will arrange a boat trip to Europe.⁸⁴ People are then released but must work to pay for their release and for the boat trip. Conversely, smugglers are also known to call the police for migrants to be arrested, following which migrants have to pay to be released from detention. Press reports arising from the current surge in the numbers of people crossing the Mediterranean also point to the possible links between militias and smugglers in the high value smuggling operation aimed at bringing migrants and refugees into Europe.⁸⁵

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84 RMMS, 2014.

85 BBC News, 2015.

4.6. Findings from primary research

4.6.1. Introduction

The Libyan authorities (DCIM) say that at any given moment there are between 5,000 and 6,000 persons held in immigration detention facilities in Libya, with some centres accommodating more than 1,000 persons and no more than a few dozen in others⁸⁶. Estimates from 2014 suggested that there were some 5,000–10,000 migrants and refugees held in detention facilities where they faced torture and other abuses, overcrowding, dire sanitation, lack of access to adequate medical care, and inhuman or degrading treatment.⁸⁷

Such reports of human rights abuses are not new; even before the 2011 conflict, most detention centres were of a very low standard, overcrowded and with inadequate sanitation and health facilities.⁸⁸ Detention periods were often set by arbitrary decisions of the relevant centre's administration despite Law No. 6 providing for a maximum detention sentence of three months for illegal entry⁸⁹, meaning that detainees faced being held on an arbitrary basis for indeterminate periods.⁹⁰ There were accounts from the late 2000s of migrants, asylum seekers and refugees sometimes being arrested by the police, detained, and then sold by the police to people smugglers, only to be caught, detained, and re-sold again, sometimes repeatedly. This meant that people were forced to pay bribes several times before eventually making it abroad, or face deportation to their country of origin or remain in detention, sometimes for years, if they were unable to pay.⁹¹ Libyan officials were also alleged to have mistreated deported migrants, asylum seekers and refugees, with multiple accounts of people being dropped off in the desert and left to die.⁹²

The current situation has deteriorated further.⁹³ The descent of Libya into lawlessness has created an environment where police, militias, smugglers, traffickers, criminal gangs, and civilians can detain migrants, asylum seekers and refugees with impunity, use them to extort money or force them into unpaid labour. As one Eritrean told the study,

**“In Libya everyone can do what he wants, there is no law, there is nothing”.
(21 year old Eritrean male asylum seeker interviewed in Calais/France in
January 2015)**

Beatings, whippings, and electric shocks and a failure on the part of the authorities to address these abuses and hold perpetrators to account are reported.⁹⁴ According to key informants, women detainees are vulnerable to sexual violence and invasive strip-searches by male guards, and young boys are at risk of rape.⁹⁵ They also allege manifestly discriminatory practices by the Libyan authorities in that almost all detainees are Sub-Saharan Africans, whereas the large populations of Syrians, Palestinians and Iraqis in the country are generally tolerated even without formal legal residence status, and are able to live relatively freely in the community. The prevalence of xenophobic and prejudiced attitudes among staff, particularly towards migrants, asylum seekers and refugees from Sub-Saharan Africa is also confirmed in human rights reports.⁹⁶ Corruption and ill-treatment is said to be endemic with former detainees typically alleging that they are forced to pay bribes to officials to be released.⁹⁷

In recent months, the migrant detention population has rapidly increased (especially in April 2015) and

.....
86 Eurasylum, 2014, p.59.

87 Human Rights Watch, 2015b.

88 Submission by the Office of the United Nations High Commissioner for Refugees in the Case of Hirsi and Others v. Italy op cit

89 Submission by the Office of the United Nations High Commissioner for Refugees in the Case of Hirsi and Others v. Italy op cit

90 Human Rights Watch, 'Pushed Back, Pushed Around: Italy's Forced Return of Boat Migrants and Asylum Seekers, Libya's Mistreatment of Migrants and Asylum Seekers' op cit.

91 Global Detention Project, 2015a.

92 Human Rights Watch, 2009.

93 Key informants working with migrant arrivals in Catania, Sicily told the study that situation was worse than it had ever been. (Interview February 2015)

94 Human Rights Watch, 2015b.

95 This was said by key informants on the ground in Libya, although key informants working with people who had arrived in Sicily said this was not a risk for male minors as teenage boys were seen as adult men by their own cultures.

96 Amnesty International, 2013.

97 Human Rights Watch, 2009.

it is reported that several new facilities have opened.⁹⁸ On 22 March 2015, UNHCR was aware of 1,219 persons held in DCIM-administered detention facilities. As of 4 May 2015, DCIM was reportedly detaining 3,245 persons, including 329 women and 34 children in various facilities in western Libya, while the numbers for detention centres in the east were yet to be verified. Most detainees were Sub-Saharan Africans, along with several Bangladeshi and Pakistani nationals. There were very few instances of Syrians, Palestinians, or Iraqis being detained, although these nationalities represent the majority of persons of concern registered with UNHCR (together with Eritreans, Somalis, and Sudanese). Many of those in detention facilities were arrested on land owing to lack of a legal residence permit. Since April 2015, more than 1,500 asylum seekers, refugees and other migrants intercepted upon disembarkation or rescued at sea by the Libyan Coast Guard have been detained in Libya.

4.6.2. Profile of Libyan sample

This study focuses on detention in Libya since the vast number of interviewees, 48/51 said they had been held there on the way to Europe.⁹⁹ Detention was found to occur throughout 2013 and 2014, with some cases as recent as October 2014, just prior to the person's arrival in Europe.¹⁰⁰ Moreover, of the 48 people detained in Libya, 45 reported being detained by 'State actors' on the basis described above (only three people reported being exclusively detained by smugglers or criminal gangs) of which 11 of the 45 were minors under 18 years of age.

The study also encountered migrants and refugees from the Syria Arab Republic and Egypt in the project sites, but they did not report detention in Libya. This may be for varying reasons, for instance, that they were better integrated into local communities in Libya and thus less exposed to detention or due to special circumstances. For instance, until recently, Egyptians were often working and did not end up in detention as they had an employers' guarantee while Syrians were able to enter the country without a visa until 2014 and were therefore less likely to be detained. Key informants also say that such groups are generally held for shorter periods of time for identity and sometimes health checks. Informants in the research sites also suggested that Syrians who make it to Europe had the resources to pay bribes and thus avoid detention in Libya. Moreover, the places of origin fluctuate as smugglers seek out new markets. For instance, key informants in Sicily report an increase in arrivals from Gambia despite the lack of any obvious external cause in terms of political or social upheaval.

The following analysis is a detailed perspective on the testimonies of the 45 individuals interviewed who had been detained in Libya by the governing authorities. It describes their journey to Libya, the detention experience, departure from Libya and arrival in Europe. Some of these people will also have been held by smugglers at some stage of their journey. However, this aspect of their experience is not the focus of detailed enquiry here. The report uses the criteria listed in the UNHCR et al. 'Monitoring Immigration Detention Manual'¹⁰¹ as an overall framework of analysis and presentation of findings. This manual is intended for use by those carrying out visits to detention facilities and presents a list of indicators to assess the conditions of detention. This study, which depends on the long distance recollections and testimonies of past experiences cannot answer the specificity of the requirements listed, but nonetheless the manual provides a useful framework for organising findings where relevant information is available.

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98 There was some conflicting information from key informants on the ground as to whether current numbers are increasing or decreasing. Some say that as at spring 2015, the number of detainees is declining due to the reducing number of detention centres and the forced return of migrants from the north of Libya to the south of the country and then further back into Sub-Saharan Africa and put the current number of immigration detainees at 2,300-2500.

99 3/51 interviewees were detained in other countries only (Egypt and Morocco)

100 The study took account of detention experiences 2 years prior to the research i.e. autumn 2012 as the cut off point to ensure the relative currency of the information gathered. It should be noted that 40% of the cases were in 2014, some as recent as October 2014, a couple of months prior to the interviews in early 2015.

101 UNHCR, 2014c.

4.6.3. Journey to detention

Reasons for leaving home

Migrants and refugees gave varying reasons for leaving their home countries depending on their nationality (see table 7). With one exception, all cases from North-East Africa (Eritrea, Ethiopia, Somalia, and Sudan) cited persecution and conflict. In West Africa, aside from four cases, the majority said they left home due to personal circumstances.

Interviewees from North-East African countries refer to persecution directed at themselves or their families as well as generalised conflict. Somali refugees consistently reported harassment by the militant group Al-Shabab: some say they were pressured to join up and feared abduction/forced recruitment if they refused. Others were persecuted simply for being themselves. One person said he was constantly harassed by Al-Shabab sympathisers who insisted he wasn't a true Muslim because he had a Christian-sounding name. Another young asylum seeker from Somalia was hindered from carrying out his work as a gravedigger,

**“One day I was busy digging a grave as usual, then out of nowhere came a group of Al-Shabab supporters.... they were shouting at me and one of them was poking his gun at my ribs ...they kept asking me who gave me the permission to bury females... saying it was indecent of me and that I am not supposed to be ‘touching’ women...I tried to explain that I was doing my job and normally I don’t handle the bodies but this particular family did not have a male presence so I’m helping them out”. He said the Al-Shabab group whipped him “to wash away his sins” and then came to his family home, threatened his mother for my “filthy and un-Islamic behaviour” and said they would “not hesitate to behead me...if they ever saw me again”.
(20 year old male asylum seeker from Somalia interviewed in London, UK in December 2014)**

Refugees from Eritrea said they fled their countries due to the threat of conscription and oppression by the governing regime. People from Sudan felt compelled to leave due to the havoc and destruction caused by the ongoing conflict between government and rebel forces. A number said they had been imprisoned by Government authorities on suspicion of being rebel supporters; for example, one said that he was out in the street, carrying cash for deposit on behalf of his employer when the police arrested him and accused him of supporting the resistance. He was detained in prison, subject to electric shocks and beatings until he passed out. He was released due to family connections but as he faced re-arrest as well as pressure to become an informant, he fled. Sudanese young men detained in Sudanese jails said they were aware of the rape of male prisoners by guards or of being threatened with rape themselves.

The picture of migrants from West Africa is the opposite; nearly all report family tensions and inter-personal difficulties as the reason for leaving. Many come from single parent families or broken homes, some felt unable to fit into the new family once their parents remarried, one said he was trying to get away from a family feud over the will of his dead father. Another boy from Gambia said his mother struggled to make a living after his father's death and turned to prostitution to make ends meet,

**“It became unbearable for me to live in my village. I was always fighting with people who offended my mother and I started hating my mum. ...I always quarrelled with her when I was at home. So I decided to go away, far away from her, to find some peace in my life”.
(18 year old male migrant from Gambia interviewed in Sicily, Italy in January 2015)**

Some of the young people were orphans and left exposed to exploitation and abuse. One Nigerian boy who moved in with his uncle after his parent's death was treated like a “slave”. Another young orphan ran away with her younger sister to Libya to escape sexual harassment by her uncle only to endure further sexual violence at the hands of Libyan guards when in detention. Of the West African cases citing political reasons, an asylum seeker from Mali said that he left home because Tuareg rebels had decimated his livestock and made his life unbearable.

Table 7		Reasons for leaving the country of origin			
Nationality	Fear of persecution (individual)	Fear of persecution (family)	General conflict	Personal reasons	Total
North-East Africa					
Eritrea	2	2	2		6
Ethiopia	3				3
Somalia	6	1		1	8
Somalia/Ethiopia	1				1
Sudan	7	2	1		10
West Africa					
Gambia	1			5	6
Ghana				1	1
Guinea				1	1
Mali	2				2
Mauritania				1	1
Nigeria				3	3
Senegal	1			1	2
Middle-east					
Syrian Arab Republic			1		1
					45

Minors gave differing reasons for leaving home alone rather than with family members, for example, because they personally faced imminent threats and harassment; because their families could not afford to send more than one person or because they were orphans and had to fend for themselves. Some embarked on this journey to help their families; one 16 year old Nigerian described how difficult life became after his father died, his mother tried to make a living by cooking and selling cakes and biscuits in the market but as the family situation worsened, she reluctantly agreed that there was no other option but for him to leave and find work elsewhere. Table 8 below shows that of the 11 cases of minors under 18 who ended up being detained in Libya by 'State' actors, the majority left alone in search of livelihoods and the rest left for varied political and personal reasons. The common pattern is that all were orphans or from single parent families.

Table 8		Reasons given by minors for leaving home alone
Reason for leaving alone	Numbers of minors	
Family dispute	2 cases, in both cases the parents had separated and the minor found it difficult to adjust to the new set-up	
Orphan	2 cases, in one case the minor mentioned escaping abuse from more distant relatives	
Fear of persecution	2 cases, both from one parent families, where the individuals feared individual persecution	
Fear of general violence	1 case from a single parent family	
Find a job/ livelihood	4 cases, all from single parent families	
Total	11	

Route to Libya

The route to Libya nearly always involved coming through Sudan in the East or Niger in the South. West Africans make their way through multiple countries depending on their starting point, Senegal, Mali, Burkina Faso, then continue through Niger and the Sahara desert into Libya. If they are from Nigeria, they enter Niger directly and then straight on to Libya. The Economic Community of West African States (ECOWAS) 'Protocol on Free Movement of Persons, Residence, and Establishment' facilitates movement around the region.¹⁰² Those coming from North-East Africa make their way to Sudan as a gateway to Libya whether their starting point is Eritrea, Ethiopia, and Somalia. Less people travel via other routes – Kenya – Sudan – Libya; Egypt – Libya; Chad – Libya; or Senegal – Mauritania – Algeria – Libya.

The journeys are often graduated and the final destination is not always known at the outset. Some plan to make a life in Libya until they arrive and find the situation untenable. Others try and make a life in countries en route but then end up leaving due to lack of opportunities or harassment from locals. Migrants and refugees may only hear about prospects in Europe from other people that they encounter on their journeys.

Migrants, refugees and asylum seekers are often supported by family members to travel; those from North-East Africa especially seem to receive money from relatives in the Middle East or Europe. 15/28 migrants and asylum seekers from North-East Africa said family members had given them money; six of these people said they received money for the trip from relatives abroad. People coming via that route may stop off in different countries, sometimes for long periods, while they try and earn a living and make a life; 6/28 interviewees from North-East Africa said they stayed in Ethiopia or Sudan for some time prior to moving on to Libya. One young asylum seeker, forced to leave Somalia under the threat of Al Shabab, first went to Ethiopia and spent a year eking out a living by doing odd jobs (cleaning shoes), earning as little as USD 3/day and sometimes not being paid at all. He lived in an abandoned house three hours from the city, and faced the daily danger of beatings and robberies from local gangs. He eventually saved up enough money for the journey to Sudan. As he did not have enough money for his carriage across the Sahara, he 'paid' for this through two months of unpaid labour for the smuggler after his arrival in Libya. Refugees from Eritrea and Ethiopia said they tried to make a life in Sudan but were harassed by informants from their own countries and by Sudanese authorities working with the Eritrean government.

Those from West Africa may also receive financial help from families, though to a lesser extent. 6/16 interviewees from West Africa said they had received help from close family, though none reported receiving money from relatives abroad. The number of people from West Africa who had graduated journeys and worked their way amounted to 8/16, proportionately higher than those from North-East Africa. One boy from Gambia first went to Senegal for three months where he worked for a family; he then went to Mali and worked for another three months selling goods in the market and cleaning, then onto Burkina Faso and Niger where he did a final three month stint in a restaurant to earn enough money to go to Libya. In a similar story, a young man made his way across several West African countries by sleeping in bus stations and making money from tips (helping people with luggage, cleaning, loading goods) until he had saved up enough (1500 Gambian Dalasi or USD 35) to cross the Sahara. Life on the streets was not without its risks,

“Living on the streets is very dangerous. There are criminal gangs in Niger who attack people because they want money and if you don't have money they get angry and beat you. This happened to me many times”.
(18 year old male migrant from Senegal interviewed in Sicily, Italy in January 2015)

Migrants also reported police corruption on their way through West Africa, particularly in Burkina Faso and Niger. They said they were stopped in the street and asked for money,

“In Burkina Faso and Niger at checkpoints, the police beat me, I was scared, they wanted money. I didn't have the money they asked for and I tried to offer less. They beat me before they let me go”.
(17 year old male migrant from Gambia interviewed in Sicily, Italy in January 2015)

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¹⁰² <http://www.cfr.org/world/economic-community-west-african-states-ecowas-protocol-free-movement-persons-residence-establishment/p28124>

In another case, the police in Niger forced a young migrant to work on a construction site for six days as he was unable to give them the USD 5 (2000 Central African Franc) that they demanded. Once in Niger, migrants say they make contacts with smugglers who arrange the trip across the Sahara.

Migrants and refugees travelling from either direction may have to wait some time while the smugglers assemble enough people for the journey. Captivity by smugglers at the starting point was not mentioned. Payment is required upfront and ranges from USD 500 to USD 3000 - the market price varies depending on what smugglers think people can afford. For instance, in the example above, a Gambian boy was taken across the desert for USD 35, far less than the going rate.

The journey across the desert especially for those travelling through Eastern Sudan is extremely arduous. Refugees frequently reported having to travel for days with little food and water in the searing heat of the day and the bitter cold at night. One said,

**“There was no water on the way, the wheels of the car kept bursting, the weather during the day in really hot and really cold at night, we didn’t have blankets’.
(26 year old Eritrean male interviewed in Calais, France in January 2015)**

They may be packed into containers with commodities in order to pass checkpoints un-noticed. Migrants, asylum seekers and refugees frequently reported fellow travellers dying from dehydration. Overall, 20/45 migrants and asylum seekers who subsequently ended up in Libyan detention described difficult conditions in the travel across the Sahara, numbers were relatively equal between those from West and North-East Africa.

En route, migrants, asylum seekers and refugees often face new demands for cash from smugglers, particularly when they are passed from one smuggler to another for the next leg of the journey. The journey typically takes around five days but some can stay in the desert for up to 30 days if they are unable to pay for the next stage. Not paying up runs the risk of being abandoned in the desert.

**“If you want to cross the desert in Niger you have to pay money to the smugglers. If you don’t pay they stop in the middle of the desert and leave you there without water or food”.
(17 year old Gambian male migrant interviewed in Sicily/Italy in December 2014)**

Five interviewees, split between those from North-east and West Africa, referred to violence by others during the journey, especially tribes in the desert.

They may experience violence at the hands of smugglers en route although reported cases of this were low, only three cases of those coming from North-East Africa and none among those arriving from West Africa. Women particularly face the danger of sexual violence including rape; three interviewees said that they were aware of this happening to others on their journey. One asylum seeker wept as she reported that it had happened to her,

**“The smugglers took me and did what they wanted with me in front of my husband. They just did it for their own pleasure. I was an animal to them”.
(23 year old female asylum seeker from Eritrea interviewed in Calais in January 2015)**

She reported being raped again upon arrival in Libya by guards at the Sabha detention centre in 2014. Other migrants and refugees said they were witness to such violence. One said he spent a month in the Sahara in a group of 28 people, including pregnant women and children. Some people were shot dead by smugglers, others died from dehydration due to the lack of water and overpowering heat, women were taken away and raped at gun point.

Arrival in Libya

Upon arrival in Libya, migrants and refugees are sometimes immediately held by smugglers trying to extort more money from them, one said that the smuggler

“... started to hit me and said he will kill me if I didn’t give him 300 more dinars. I told him I don’t have the money. He put me to work on a farm...I stayed there 20 days. I was tortured every day”.
(Testimony of 17 year old male Sudanese asylum seeker interviewed in Calais in December 2014)

In a more unusual case, one 15 year old migrant was held captive alone for sneaking into a smuggler’s truck without payment, when the smuggler discovered this, the boy was taken to an isolated house, and subjected to electric shocks in order to make him call his mother for money.

Being held on arrival was particularly commonly reported by those from North-East Africa with 8/28 migrants and refugees from that region saying that they were held by smugglers who demanded extra payment. There was only one case of a migrant from West Africa who reported being held in this way. This 17 year old migrant described what happened to him,

“When we reached Baahe, the Libyan village on the border with Niger, the smuggler sold all of us to another Libyan smuggler who wanted 10,000 Gambian dalasi (USD 230) to let us go. We did not have so much money so they kidnapped all 25 of us and locked us up in a ramshackle house for 15 days. We were made to work as cleaners, gardeners and doing loading and unloading, and other heavy jobs”.
(17 year old male migrant from Senegal interviewed in Sicily/Italy in February 2015)

There were occasional reports of what appears to be collusion with the officials. An asylum seeker from Sudan said he gave the smugglers USD 500 for taking him into Libya, on arrival he was handed over to the police who demanded a further USD 750 (1000 Libyan dinars) and then put him in captivity because he was unable to pay. “They worked together”, he said. In another case, the smuggler forced the migrant to work for six months without pay upon arrival in Libya. When the migrant tried to ask for his salary, the employer called a policeman who beat him severely and threatened to put him in jail. The migrant never got this money and thinks the smuggler and the policemen were related.

More often than not people said they were free to go once in Libya. They started to make a living by picking up odd jobs in construction, car washing and so on. They lived in shared quarters with other people from the same country. Day to day life was hazardous and non-nationals faced regular violence and extortion from Libyan youth gangs known as the ‘Asma boys’. As one asylum seeker put it,

“Even small children are dangerous in Libya and demand money from you by threatening you with knives and guns”.
(16 year old male asylum seeker from Mali interviewed in Malta in January 2015)

Racism comes as a new experience for many Sub-Saharan Africans and discrimination by Libyan people was widely reported,

“They don’t like black people and when you walk down the street you are always scared of being arrested by soldiers or attacked by the Asma boys”.
{Testimony of a 17 year old Gambian male migrant interviewed in Sicily in January 2015)

4.6.4. Circumstances of detention

Persons responsible for detention

As stated above, 45/51 reported being detained by agents of the State, mostly the police and sometimes persons described as the 'military' as well as militia. This partly reflects the sampling as the study sought out detention by State apparatus. The three cases that reported being detained exclusively by non-State actors (smugglers and criminal gangs) are not the focus of the following analysis. The research is concerned with detention carried out by the official governing authorities or militias, as being the responsible authority in charge of particular areas.

Given the breakdown of law and order in Libya, it is difficult to be certain which authorities are responsible for these 45 cases of detention. The boundary between the different authorities is increasingly blurred given that only part of the country is governed by an internationally recognised authority, the rest by a de facto Government and rival militias. The distinction between the official centres run by the DCIM/Ministry of Interior and 'unofficial' centres is clear but the issue is establishing which authority is ultimately responsible since both the 'recognised' government in the east of the country and the de facto government in the west of the country are both opening up and running detention facilities. It should also be noted according to key informants that figures in these 'official' detention facilities constitute a fraction of those in 'unofficial' detention.

Interviewees referred to the detention being carried out by persons in authority based on their recollections of uniforms, vehicles and the premises in which they were kept. 30 reported being arrested by police and four by soldiers. The remaining cases gave more ambiguous responses: five said they were arrested by men and/or militia in uniform and three by people in plain clothes who later turned out to be policemen and/or soldiers, for instance, one person said he was detained by a mixed group of men, only one was wearing uniform, the rest were in civilian clothes. In two cases the interviewee was unsure if the detention was by 'State' agents or smugglers, for instance, one said it was impossible to distinguish between them because anyone can wear a uniform.

Most migrants, asylum seekers and refugees said they were arrested abruptly and arbitrarily whilst going about their daily business. The reason for arrest, where given, was usually stated to be illegal entry or lack of papers, usually identity documents or sometimes health insurance cards. Arrests were typically accompanied by violence, one recalled,

“I was punched, thrown on the ground, the soldiers tie your hands, kick you, spit at you and keep punching you until you pass out....they said I have no documents, I am illegally in their country and will have to pay USD 2000 or stay in detention until I die”.
(20 year old male asylum seeker from Somalia interviewed in the UK in December 2014)

Such demands for payment are the norm and many migrants, asylum seekers and refugees said they were asked for money at the time of arrest, with sums ranging from as much as USD 3000 with an average of USD 400. One Ethiopian male asylum seeker aged 22 was told when being asked for payment upon arrest, “money is the judge”.

Migrants, asylum seekers and refugees said that there was a different approach depending on nationality, with more lenience shown to those who spoke Arabic or had a more Arab appearance. One said that Sudanese people or those who spoke Arabic were better off than Ethiopians and Eritreans, with people from Ghana and Guinea worse off still. At times, there appeared a financial motive in treating different nationalities in different ways. One asylum seeker said that those doing the arresting knew who was likely to have money to pay,

“If they catch a Somali or Eritrean. Wow, that means great money for them”.
(Testimony of a 21 year old male asylum seeker from Eritrea interviewed in Calais in January 2015)

In other cases, interviewees put it down to racism. Sub-Saharan Africans frequently reported experiences of racism during their time in Libya. “Arab people hate black people”. One said he was suddenly arrested

one day when the police appeared at the quarters where he was staying with other migrants, asylum seekers and refugees,

**“There were a lot of migrants in that foyer, black and white people (the white people were from Egypt, Tunisia or Algeria) and the police arrested only the blacks”.
(34 year old male migrant from Guinea interviewed in Sicily/Italy in February 2015)**

Another said that he was arrested in the street with a group of others, there was a lot of violence, everyone had to get down on their knees and put their hands behind their back. The police asked people their nationalities. Those from Sudan had the choice of working for free or going to jail. The migrant himself refused to work for free and was beaten severely on the head and taken into detention while still unconscious.

Mapping of detention facilities

Interviewees were taken to known immigration detention centres, namely Ajdabiya, Brak Shati, Sabha, Gharyan (two facilities known as Hamra and Bourashada), and the detention camp for ‘illegal’ immigration at Kufra. Some were detained in prisons, namely, Abu Salim/Buslim, Al Khoms¹⁰³, Ain Zara and Turhana/Tarhouna. Migrants, asylum seekers and refugees also reported being taken to some facilities¹⁰⁴, including Ganfudo (Benghazi) and the facilities at Tripoli zoo¹⁰⁵, which are said to be controlled by militias. There were other names cited by migrants, asylum seekers and refugees that were recognised by key informants with experience on the ground such as Garabulli. There were some that could not be identified either as detention facilities or towns from existing records (Duishi in or near Tripoli, Ahmad, Griana (near Tripoli), Khazonov and Shahara). In some cases, interviewees reported short stays in police stations, or said they did not know the name or in the case of detention by smugglers, were taken to isolated houses.

In total, the study identified 18 different facilities in which migrants, asylum seekers and refugees were detained. Verifying specific facilities and geographical locations was a challenge as the research depended on interviewee recollections some time after detention. The names were often ambiguous, spelled or translated in different ways and the names of towns were sometimes conflated with the names of detention centres. Interviewees could not say which authority was responsible for the centre in question, at most they could identify if the detention was carried out by persons in authority based on the uniforms, premises and vehicles but were unable to specify beyond this point which institution or group was responsible for the detention.

Although mapping of facilities with precision is difficult, the report is able to triangulate the names of facilities provided in different testimonies with information from key informants. Table 9 shows named facilities, the location, the last date of detention according to the sample, the number of interviewees naming a particular facility, and whether visits from international organizations were reported. This information was then cross-checked with information provided by key informants to show which authority is responsible for each facility. This shows that six of the detention centres listed are under the control of DCIM, a further two may be under DCIM or other control, two are under the control of militias, and the existence or management of the remaining eight centres could not be confirmed. Visits by NGOs or international organizations were also confirmed to take place at nine of the detention centres.

The majority of facilities (11/18) are only mentioned in one testimony and a further 7/18 mentioned in two or more testimonies. Three facilities are based on more than one testimony and are also said to receive visits from international organizations: Gharyan, Sabha and Abu Salim. These premises are therefore prioritised for more specific reporting in the sections below as it is most likely that the details about them (existence, management arrangements and conditions) can be confirmed. Moreover, if these places have been visited by international agencies on a regular basis, they are exposed to the requirements of international standards and more can be expected of them. The report does not detail conditions in the other facilities as it would lack credibility to report on conditions in places which are based on a couple of uncorroborated testimonies only.

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¹⁰³ There are two facilities with this name, one run by the Ministry of Justice and the other run by the Ministry of Defence. The details of the case involving detention by police rather than military suggests the former.

¹⁰⁴ Global Detention Project, 2015a.

¹⁰⁵ Crisp, 2014.

Table 9

Mapping of named detention facilities

Name of facility according to interviewee	Location according to interviewee	Date of last and first detention among interviewees in study	Controller of facility according to key informants or secondary sources	Visits by international organization recollected by interviewees	Person/s responsible for arrest according to interviewee	Number of testimonies referring to facility with this name	Verification by key informants
Abu Salim/ Buslim	Tripoli	June 2014; December 2013; Oct/Nov 2012	Department for Combating Illegal Migration (DCIM)/Ministry of Interior	4 separate testimonies (1) June 2014 – UN visit; (2) Dec 2013 – Red Cross visit; (3) June 2014 – UN came and took away sick people; (4) Oct/Nov 2012 – UN came to record videos but detainees not speak to them. Referred to facility as 'Buslim'	Men in uniform, military; police	4	Confirmed name of facility, controller, current use and access by NGOs and international organization. The facility has the alternative name of Buslim. One key informant said that there were various facilities in the location but testimonies did not mention further specific names.
Ain Zara	Tripoli	January 2014	DCIM		Police, soldiers	2	Confirmed name, controller, current use and NGO access. One key informant said that there may be more than one facility in this location.
Al Khums	Al Khums City	June 2014	DCIM	May/June 2014 – Red Crescent visited	Police	1	Confirmed name, controller and NGO access but say facility is now closed.
Brak Shati	Barak al-Shati (southern region)	January 2013	DCIM	January 2013 – UN came 3 times about refugee status	Police	1	Confirmed name, controller, current use and NGO access.
Duishi	Tripoli	January 2013	Not known		Police	2 separate testimonies spelt the name as shown here.	Not confirmed by key informants; some speculate that interviewees may have been referring to a facility called Twaisha.
Ganfouda	Benghazi	June 2013	Militia		Police	2	Not confirmed by key informants but the name appears in secondary sources.

Name of facility according to interviewee	Location according to interviewee	Date of last and first detention among interviewees in study	Controller of facility according to key informants or secondary sources	Visits by international organization recollecting by interviewees	Person/s responsible for arrest according to interviewee	Number of testimonies referring to facility with this name	Verification by key informants
Gharyan	Gharyan	May 2014; and March to May 2013	DCIM for Abourshada) and DCIM and Brigade for Al Hamra.	May 2014 – regular visits from UN, IOM, Red Crescent. IOM helped Malians and Senegalese to return home.	Police	2 independent testimonies refer to a detention centre called 'Gharyan' but do not specify further specific names.	Confirmed two facilities in the city of Gharyan known as Abourshada and Al Hamra but interviewees did not use these names. Confirmed names, controller, current use and NGO and international organization access.
Griana	Tripoli	March 2014	Not known		Man in plain clothes who turned out to be police officer	1	Not confirmed by key informants who are uncertain of its existence. could refer to 'Gharyan'
Islavia	Tripoli	2013	Not known		Police	1	Not confirmed by key informants who are uncertain of its existence.
Garabulli	Garaboli	June 2013	Key informants differ with one saying the facility is run by DCIM and another saying the controller is unknown.		Unsure if smuggler or military	1	Confirmed the name of a facility as Gwea and its current use but contradictory information on the controller of the facility. Interviewee did not refer to 'Gwea'. NGO and international organization access confirmed.
Khazanov	Near checkpoint	October 2013	Not known		Soldiers	1	Not confirmed by key informants who are uncertain of its existence.
Kufra	Al-Kufrah	2013	DCIM	2013 – Somali embassy visit	Soldiers	2	Confirmed name, controller, current use and NGO access.

Name of facility according to interviewee	Location according to interviewee	Date of last and first detention among interviewees in study	Controller of facility according to key informants or secondary sources	Visits by international organization recollected by interviewees	Person/s responsible for arrest according to interviewee	Number of testimonies referring to facility with this name	Verification by key informants
Quaryan	?	March-May 2013	Not known	UNHCR came to give detainee a card and provided food (interviewee referred to place as Quaryan)	Police	1	Key informants consider this might be one of two facilities known as 'Qatroun' or 'Gharyan' (above)
Sabha	Sebha city, southern region	October 2014	DCIM	May – October 2014 – UNHCR visited every 3 months	Different interviewees refer to - Military, militia with uniforms, police	3	Confirmed name, controller but say it is now closed.
Shahara	Near Tripoli	2014	Not known		Police	1	Not confirmed by key informants who are uncertain of its existence.
Turhana	Tripoli	End of 2013	Not known		Men in uniform	1	Not fully confirmed by key informants as location and spelling of name are different to the facility they are aware of.

Due process

Table 10 sets out the findings according to the monitoring criteria detailed in the above-mentioned manual concerning due process. In summary, none of the interviewees reported any kind of legal process at all; none were informed of their rights or had access to a lawyer. 4/45 said they were only allowed to make calls to their families and friends asking for money to be released. Most did not have identity documents with them but those that did said they were not handled duly; 5/45 said that their identity documents were taken off them on entering the detention facility and were not returned. In one case, the documents were torn up in front of the detainee.

None were able to apply for asylum whilst in detention. One Eritrean reported applying for asylum at UNHCR after being released in Tripoli. Only one person wanted to claim asylum in Libya and said he was obstructed in doing so (see section 'Focus on specific facilities – Abu Salim for further details of this testimony). None were given the option of return, most did not want to return but a handful that did were told that there was no money to send them back. Some were threatened with being returned to the desert if they did not pay up.

Table 10

Monitoring of due process procedures

Monitoring criteria	Findings based on 45 detainees in Libya
<p>Detention procedures</p> <p>Immigration detention is exceptional and permissible only on grounds prescribed by law and in accordance with procedures authorized by law</p>	0 of 45 report a legal process
<p>Access to a lawyer</p> <p>Detainees have access to a suitably qualified lawyer Detainees are systematically informed on arrival in writing and in a manner / language they understand of the reasons for arrest and detention</p>	0 of 45 report access to a lawyer Interviewees were asked about reasons given at time of arrest 21 of 45 said they were told that they were arrested for 'illegal entry' or for not having valid identity documents, 17 said they were not given a reason and the rest did not comment on this point or their answers were unclear. 2 of 11 minors were given 'illegal' presence as a reason, 7 of 11 were given no reason, and 2 of 11 did not give a clear answer on this.
<p>Arrival and Reception</p> <p>Immigration detainees are informed of their right to seek asylum and to access other forms of protection and they have effective access to these procedures as appropriate. Detainees can telephone family and legal counsel in private</p>	0 of 45 were informed of a right to seek asylum. In addition 0 of 45 were asked if they wanted to return to their country of origin; nor did they feel pressured to return. Only 4 of 45 said they were able to call family/friends and that was only for the purpose of asking for money for their release.
<p>Cash and possessions</p> <p>There are clear and readily accessible rules and regulations about the retention of property on admission to the place of detention</p>	5 of 45 said their identify documents were taken off them and not returned, one reported being allowed to keep his documents. The rest of the interviewees said they did not have documents when they arrived in detention.

4.6.5. Conditions in detention

Vulnerable groups

All were detained with large numbers of other people ranging from a few dozen to hundreds depending on the size of the cell. Table 11 sets out the treatment of vulnerable detainees. In 29/45 cases, interviewees said men and women were kept separately, in five cases men and women were kept together, and the remaining instances were inconclusive, either no women were seen or no information was provided. The guards were all male, except for references to female guards at Zawiya detention facility in October 2014; Sabha in April-June 2013; and female soldiers at an un-named military camp near Tripoli in September-October 2012.¹⁰⁶ The detention of minor males with unknown adult men was more commonly reported; 14/45 interviewees said they were aware of the detention of unaccompanied minors, including in principal facilities like Abu Salim, Gharyan, Ganfuda, and Ain Zara. Only a few of these were fathers with sons as only 2/45 reported seeing accompanied children with parents in detention facilities.

In some places, non-nationals were in the same detention facilities as Libyans and had the perception that the Libyans were treated better. One female asylum seeker recalled,

“I was in the foreign room with 100 women from Sudan, Ethiopia, and Eritrea. In front of us there was another room for Libyans. We could see that the room was better. The women over there had three meals, better drinking water and access to toilets while we had food once a day, the water they gave us for drinking was salty and the toilets were clogged”.

(23 year old Eritrean female detained in 2014 at an unknown detention facility near Tripoli. Interviewed in Calais/France in January 2015)

Some Sub-Saharan migrants, asylum seekers and refugees felt that they were treated differently because they were black, noting that often the only other people in detention were black or that they were separated from other ethnicities, “...[in the first detention centre]...black people were separated from white people (Egyptians, Algerians...) ..[in the second detention centre] there were only black people”.

.....
106 Key informants questioned the testimony about the presence of female guards and soldiers.

Table 11

Monitoring criteria	Findings based on 45 detainees in Libya
Vulnerable persons	
Persons in situations of vulnerability/risk Children are, in principle, not detained. When they are detained, this is only as a measure of last resort and for the shortest possible period of time	45/2 reported seeing accompanied children with parents in detention facilities.
Unaccompanied or separated children are not, as a general rule, detained. Detention is not justified by the fact that they are unaccompanied or separated or on the basis of their migration status. They are not criminalized for irregular entry or presence	45/14 were aware of unaccompanied minors being kept in the detention facility.
Women are separated from men in detention, except in case of families, as appropriate. Staff working with female detainees are female	Women were kept separate according to accounts. There was one report of a female guard.

Ill-treatment

Interviewees said that the centres had armed guards who were often under the influence of alcohol or drugs. Beatings with belts, guns and other types of ill-treatment were the norm. Table 12 summarises detainee experiences in this regard. A number of interviewees (25/45) reported this as a direct personal experience; only six said that they had not experienced direct violence or beatings by guards; the rest did not comment. Other forms of ill-treatment included electric shocks, water spray, verbal abuse (being told “you are animals”), threats, humiliation, or contrived punishments, for instance, being asked to keep their arms up all night. Interviewees frequently said they were beaten for the slightest thing, simply for speaking or asking for water. One Gambian migrant said,

**“I spent two months in prison. They beat me regularly. They came to ask me if I had found the money to pay them. Since I didn’t, they beat me violently”.
(18 year old Gambian male held in detention in ‘Griana’, Tripoli in 2014. Interviewed in Sicily, Italy in December 2014)**

A Sudanese asylum seeker said the guards forced his friends to listen in on the phone while they beat him up,

**“The police tortured me when they wanted my friend to hear what I was suffering in prison, so he will give them the money”.
(26 year old Sudanese male detained in an un-named facility in Benghazi at the end of 2012/beginning of 2013. Interviewed in Calais in December 2014)**

Two female interviewees reported being raped themselves; one was distraught as she recounted how soldiers took her away at night, and expressed relief that it did not happen to her younger sister who was with her. Several other interviewees said they were aware of women being raped in detention centres. They saw women being taken away at night by guards, and knew of women who had been impregnated by the guards and forced to give birth in detention. One Sudanese male said he saw women being taken away, he could hear them screaming as they were raped, and heard officers talking about rape. Incidents of sexual violence were reported to occur in detention centres visited by international agencies such as Sabha, Ain Zara and Abu Salim. There were no reports of sexual violence against males; whilst this was a sensitive issue for the study to broach, it was spontaneously reported by two nationals who had been detained in Sudanese jails, which suggests that migrants may have felt able to raise it with researchers if it had been an issue.

There was no recourse for internal complaint in any of the facilities. One interviewee said his friend made complaints on his behalf to an international organization with an office outside Abu Salim in late 2013 and that shortly afterwards he was released. In the harsh and overcrowded conditions found in Libya’s

detention centres, tension is inevitable, and there were also some reports of fighting among detainees, such as people stealing food off each other.

Table 12

Monitoring the ill-treatment of detainees

Monitoring criteria	Findings based on 45 detainees in Libya
<p>Torture and other ill-treatment No person in immigration detention is subjected to torture or to cruel, inhuman or degrading treatment or punishment,</p>	24 of 45 say they were personally ill-treated through beatings and other forms of abuse. This includes 11/8 minors. Two women in the sample reported that they had been raped.
<p>Requests and complaints Detainees can raise any aspect of their stay in immigration detention through an internal confidential complaints procedure. Detainees have access to an external confidential complaints procedure</p>	0 of 45 said they had access to any means to lodge a complaint.

Food, water, sleeping arrangements

Food was generally very inadequate; most (36/45) said they only received one meal a day consisting of basic staples such as pasta, bread, rice, biscuits, broth, or couscous.

“Once a day we were given some bread and a small glass of water...I adapted to eating very little”.

(23 year old Somali male asylum seeker detained in a facility known as Duishi, Tripoli in late 2012 to mid 2013. Interviewed in Malta in December 2014)

The provision of meat and dairy products or fruits and vegetables was rarely mentioned. More regular and substantial meals, two or three times a day, were mentioned by 9/45 migrants and refugees staying in Ganfouda and Sabha detention centres. But this was not consistently repeated by all people who stayed there. In the worst cases, detainees were given only a bread roll or no food at all on some days. While some had adequate access to clean drinking water, 17/45 complained they only had water once a day or that the water was salty or unclear. Sleeping on the floor with no blankets or mattresses was the norm. A few had their own bed, for instance in Gharyan, one of the centres visited by the UN. Bedding, where provided, was old, over-used and very smelly. Table 13 summarises the availability of food, drinking water and adequate sleeping facilities.

Table 13

Monitoring food, drinking water and sleeping arrangements

Monitoring criteria	Findings based on 45 detainees in Libya
<p>Food and Drinking Water Immigration detainees are provided with sufficient food of nutritional value and a varied and balanced diet, free of charge</p>	45/9 reported receiving adequate food comprised of 2 to 3 meals a day. The breakdown among minors was 11/3 reporting the same.
<p>Meals and drinks/water are provided at regular intervals</p>	All had access to drinking water but 45/17 reported problems with the water available e.g. dirty, salty, insufficient (one glass a day), only available from the bathroom, or in one case having to pay for it.
<p>Sleeping arrangements Sleeping accommodation for all immigration detainees is well maintained, safe, clean and with adequate furniture. Detainees are supplied with clean bedding.</p>	45/3 reported adequate sleeping arrangements on clean beds. The rest reported sleeping on the floor, sometimes without mattresses and blankets.

Sanitation and hygiene

Sanitation facilities were usually wholly inadequate as shown in table 14. Most, 37/45, described filthy conditions and an insufficient number of toilets, sometimes as few as two or three toilets for 400-500 people. Toilets were often in the cells, afforded no privacy and consisted of little more than a waste bucket. One interviewee described the facilities,

“We had a bucket for a toilet shared between us and used in view of everyone in the room. This was emptied outside in the garden on a daily basis, one of us, usually me since I was small and thought unlikely to run away, was taken out in the early hours of the morning when it was still dark outside to empty it”.
(26 year old Mauritanian male refugee detained in Adjabya in 2012–2013. Interviewed in Calais, France in November 2014)

If the toilets were outside, windows to access them was limited to fixed times once or twice a day with guards refusing access at other times. In the worst cases, people were forced to defecate and urinate in the cells; people described having to urinate in the same glass in which they were given drinking water or having to sleep on floors wet with the urine of other detainees. Access to showers or bathing facilities was rare. Sanitary items were not habitually provided to menstruating women.

Table 14

Monitoring sanitation and hygiene facilities

Monitoring criteria	Findings based on 45 detainees in Libya
Sanitation and Hygiene Detainees have ready and unrestricted access to well-maintained, clean, decent and private sanitation facilities.	37 of 45 reported inadequate sanitation facilities, 7 did not give a specific response and only one person reported satisfactory facilities. Concerns included overcrowding, dirty facilities, limited times of access and lack of privacy.
Detainees have access to adequate and private bathing and shower facilities, at a temperature suitable to the climate and as frequently as necessary for general hygiene	4 of 45 reported access to a shower or bathing facilities but the adequacy of the facilities was not commented on. This was not commented on by all.

Activities

There was no outdoor access as a rule (see table 15). In the best case, in one of the larger detention centres, Sabha, detainees had access to the yard four times a day, in the worst case; a migrant was kept imprisoned in an underground cell for a year resulting in lasting damage to his eyesight,

“The problem was light, there was no light and I had problems with my eyes when I came out”.
(26 year old Mauritanian male migrant detained in Adjabya in 2012–2013. Interviewed in Calais, France in November 2014)

7/45 said that they had to do unpaid work such as handyman jobs for guards, such as cleaning weapons or doing household chores, or work on farms and construction projects outside.

Table 15

Monitoring the activities available to detainees

Monitoring criteria	Findings based on 45 detainees in Libya
Activities Work is not compulsory	7 of 45 including two minors said they were forced to undertake unpaid work outside
Immigration detainees are able to move freely within the facility and have at least one hour per day of suitable exercise in the open air	3 of 45 said they had access to the open air on a daily basis, 3 others said they had occasional access, the rest had no access.

Health care

None of the migrants, asylum seekers and refugees reported receiving a health check¹⁰⁷ (table 16). One interviewee said his blood was taken at the detention centre in Tripoli zoo, but he did not receive any results from this test. Some said they were healthy on entering the facility and developed health problems afterwards, particularly skin rashes, respiratory disorders and stomach problems. One 26 year old Sudanese male asylum seeker said that he had not been ill before he got there but then got very sick with stomach pains because of the food and water and rheumatism from the humidity. He was refused a doctor despite requests.

Several reported injuries from beatings, "I was beat repeatedly on my knees and had strong pain there." Those that reported injury or illness were not given medical treatment. There were occasional reports of a doctor being available in some of the major facilities – Sabha and Gharyan; everyone who received such medicines said they did not have any effect and questioned the competence of the medical staff concerned. It is worth noting that a significant number said they had no health problems at all despite being in such deplorable conditions.

Table 16

Monitoring the provision of health care

Monitoring criteria	Findings based on 45 detainees in Libya
Health care Health screening is provided on arrival by a suitably qualified medical doctor in private (or by a fully qualified nurse reporting to a doctor in private and as soon as possible after admission)	45/0 reported having a health screening on arrival. (one reported having a blood test only).
All detainees have full and equal access to free health care services	45/5 said that there was access to a doctor/medical support.

Visits by international agencies

Migrants, asylum seekers and refugees who stayed in Sabha, Abu Salim, Brak Shati, and Gharyan prisons/detention facilities reported visits from the UN or IOM (table 17). Aside from that no other visits were received except for Red Crescent visits at police stations, or an embassy official visiting Kufra.

Table 17

Monitoring visits by external agencies

Monitoring criteria	Findings based on 45 detainees in Libya
Visits Detainees have easy and ready access to UNHCR, ICRC and/or the Red Cross or other organizations and, at their own initiative, consular officials or diplomatic missions	45/9 detainees recalled visits of international agencies, and one individual recalled a visit from an embassy.

The study took a closer look at detention facilities visited by international agencies (Sabha, Abu Salim, Gharyan), as the conditions there might be expected to be better as compared to others where there was no scrutiny from the outside world. Accounts suggest that such facilities also fall far short of international standards.

.....
¹⁰⁷ Key informants say that health checks, where carried out, were done to remove/deport individuals found to have HIV, Hepatitis or Tuberculosis, rather than to provide them with adequate treatment. This raises human rights concerns.

Focus on specific facilities

Abu Salim

Abu Salim is a detention centre in Tripoli that continues to be in operation as of May 2015 and is controlled by DCIM. The study encountered four detainees who had stayed in Abu Salim at different times over the period in early 2013 to June 2014. Interviewees' reports from 2013 describe the prison as very large with some underground cells. Estimates of overall numbers range between 1,000 and 2,000 detainees. Each cell held around 50 to 60 persons. The guards carried arms and there were tanks and large weapons outside. Women and men were kept separately but minors ranging from 14 to 18 years were detained with adults. Smaller children were kept in separate rooms with women or taken away quickly after arrival. One respondent reports that the facility also had criminals of Libyan nationality who were kept in a separate part of the premises.

All interviewees said that there was no legal process in Abu Salim, one laughed, saying, "In Libya? There is no legal process in Libya! There is no judge! There is no court!" Instead they report being asked for money to be released, including as recently as May to June 2014. One detainee called a friend for help who tried to rally external support from his embassy and an international organization, which he thinks helped secure his release as the police "were afraid of getting caught". One of the detainees actively solicited asylum in Libya but says the police deterred him from doing so. Then, after a month there, he recalled that a high ranking policeman visited the prison and told them that they could not be detained and, if they wanted, they could ask for asylum even though they had no papers. The asylum seeker thinks this man helped him be released on January 2014.

Two people staying there in the course of 2013 said they were ill-treated, beaten, and sprayed with cold water on a regular basis by people wearing army uniforms and by guards. One person staying there in late 2012 said he was forced to sleep with his arms up all night. There was no internal recourse for complaints. Though one was aware that an international organization opened an office for complaints in the city in May 2014 as he had been released by that point and wanted to file a complaint but events got in the way as militia took over the city.

Reports ranging from December 2013 to June 2014 say that the food provided was inadequate (one meal of macaroni or rice once a day), water was only available from the bathroom, the tap did not always work and the water tasted salty, there was nothing to sleep on and no bath or shower. One person staying there in May/June 2014 said the toilets were in the cell shared with 50 other detainees, and there was no door. He describes how they hung up some clothes to try and afford some privacy. Reports from 2013 suggest there was no doctor available. One interviewee said that his health was very good when he entered but he became ill and weak and his hair turned white. The person who stayed there at the time said that he recalled visits from the UN in May/June 2014, who came to take sick people away.

There was some outside access. The detainee staying there in December 2013 said meals were provided in the outside yard once a day. The minor staying there in May/June 2014 said they were taken out each day to do cleaning and carry out building works in the houses of staff. One 20 year old Sudanese male asylum seeker who stayed in the facility in 2013 summed up his time in Abu Salim thus:

"Once a day we had a little rice and a little water. It was not enough; there was no bed or pillow for sleeping. We slept on the ground with one blanket only. There was no bathroom or shower. There was a toilet but they were very dirty and overcrowded. It was impossible to go outside to do any exercise. There was no fresh air. It was really hot inside. There was no window, no natural light". Still he then went on to reflect, "I was really lucky in this prison because many people have been killed there, shot by the army in front of my eyes."

He eventually left when one of the Libyan guards told him that his brother needed someone to help him on his farm. He worked on the farm for eight months but when he asked for pay, his employer refused and said he would send him back to prison. He decided to escape and go to Europe.

[This account is based on four testimonies: 17 year old male asylum seeker from Sudan interviewed in Calais, France in December 2014 and detained in Abu Salim from May to June 2014 (see Box 1 for further details); 26 year old Sudanese male asylum seeker interviewed in Calais in January 2015 detained Abu Salim from December 2013 – January 2014; 20 year old Sudanese male detained in Abu

Salim interviewed in Calais, France on 24 January 2015 stayed in Abu Salim in early 2013 (possibly for a year but end date unclear); 18 year old Gambian migrant detained in October/November 2012 for an unknown period.)

Gharyan

There are two detention facilities in the city of Gharyan (Aburshada and Al-Hamrah) both are under the control of DCIM and the latter is understood to be closed at the time of writing this report. Interviewees did not refer to the separate facilities but two persons said that they had been detained in 'Gharyan'. The detention facility at Gharyan appeared the most visited by multiple agencies according to interviewees staying there in 2013 and 2014. The UN, IOM and the Red Cross were said to visit the place on a regular basis, and brought with them "shampoo, some Colgate, some powder to wash the clothes and dishes... IOM came to help Malian and Senegalese to go back to their country". Embassy staff, mainly from West Africa, also came, as did some journalists to carry out interviews.

The premises were described as consisting of at least 10 to 20 different storage containers of around 100 square metres, each housing around 50 people. According to accounts, numbers were decreasing from May 2014 as people were being released and not replaced by others. Reports indicate that women were kept separately but that minors as young as 15 years of age were detained with adult men.

The living conditions appeared relatively good. As one asylum seeker said,

"It was quite good because it was new. We had a lot of materials to clean the place. The ground was hard so we could sleep on it with our blankets. There were artificial lights inside, but little natural light because the windows were small and very high. There were three bathrooms and three toilets in the container. It was not too hot because they had air conditioner. We also had blankets to sleep, and the organization also gave us mattresses."

They each had their own beds, which were clean, and they kept the toilets clean themselves. Food mainly consisted of macaroni and was insufficient. There was a mobile shop where people could buy more food and drinks. The drinking water was salty.

There was a doctor available from the international organizations, although the treatment provided was said not to work. An interviewee said he had no access to a doctor despite having a bad cough and spitting blood in August 2013. It may be that conditions improved after his time there. Earlier accounts suggest beatings by guards were commonplace though these appear to have lessened by 2014. Corruption remained an issue in 2014 with an asylum seeker reporting that he was released once a cousin in the UK sent USD 1200 via an Eritrean smuggler to pay off Libyan guards. In an earlier case from December 2013, some Gambian detainees escaped after digging a hole and running away.

The situation in this facility therefore appears relatively good based on the testimonies given in this study as compared to others although still not up to international standards in some areas. Interviewees felt that the frequent visits by international agencies make a difference, as one migrant put it "the situation for me was calm, because the international organizations were present, the Libyans were not able to do whatever they wanted".

[These testimonies come from a 21 year old Eritrean male asylum seeker who stayed in Gharyan in mid 2014 (interviewed in Calais/France in January 2015), and an 18 year old Senegalese male migrant who stayed in the same place in mid to late 2013 (interviewed in Sicily/Italy in January 2015)]

Sabha

This detention centre in Sabha, in the south of the country under the control of DCIM is now said to be closed. Amnesty International in its '2013 'Scapegoats of fear' report criticised the harsh conditions at Sabha following a visit in May 2013. Detainees interviewed for this study that stayed in Sabha in 2013 and 2014 confirmed these concerns. They reported regular beatings, including one who said his wrist was broken by guards and left to heal by itself, alongside allegations of sexual violence against women by staff. There was no one to complain to. The living conditions were squalid, the toilets were filthy and access to them sometimes limited to twice a day. One detainee who stayed there in 2013 said the toilets were in the cells. Opportunities for showering or changing clothes were lacking. One said that they had to wear uniforms but could not wash or change them. There was no access to fresh air unless detainees were taken out to work for the guards. Food comprised of one meagre meal of "pasta with salty broth"

or bread once a day. Drinking water was available.

Men and women were kept separate but children, some unaccompanied, were detained with adults. There was usually no access to health care except for one detainee who said that he received medicines from UNHCR in 2014. Detainees were brought there without any legal procedure, access to lawyers or courts, and made their way out if they were able to pay substantial bribes of a couple of thousand dollars. Interestingly, one large group of 90 people was let go and set on a boat to Europe in October 2013, not long after the aforementioned Amnesty International report. According to one of the detainees, "One day a general came to the camp with many soldiers, he spoke Arabic and said that we could no longer stay in Libya, they didn't want us there." However, in 2014, there were reports again of bribes being required for release. One detainee who stayed there from May to around October 2014 said he paid USD 2800 to a guard to leave Sabha and be put on a boat to Italy but the guards did not keep their word, they took the money, called the Libyan military who detained him and the group he was with. Some of them escaped from the second time detention and made their way to Europe.

This is an eyewitness account of Sabha detention centre from a 22 year old Ethiopian male asylum seeker who left Sabha in October 2014 following six months detention.

"...The jail I was kept in was in the city of Sabha. It was a government prison called "Sabha jail 40". UNHCR knows this place as they came once every month or two. They gave money to the detainees for food. Every time UNHCR came, the guards acted as if it was a refugee camp and let us go outside... Women and men were kept separately... There is a lot of violence against women. The guards came at night and raped the women; I could see it from my cell. We were badly treated, if you don't listen to the guards or if you say anything, they hit you. Most of the time the guards were drunk and drugged up with Hashish, they would then go and rape the girls.

There were around 80 detainees in each cell. There were around 50 cells. When I arrived my arm was injured. During a UNHCR visit in June 2014 I showed them my arm and they gave me medicine. There was one toilet in each cell for 80 people. You couldn't use it when you needed it; there were too many people and no door. We put some clothes up to give some privacy. We had one meal every 24 hours, sometimes rice or bread. Drinking water was in the bathroom. When UNHCR came it was different, they would ask us to clean the bathroom and give us food.

They took us to work for them every day outside the jail but in an enclosed space. The work, for example, involved cleaning weapons or bullets. They would take us by car but we couldn't see anything from the window.

I paid money to get out: USD 1500 dollars. They gave me a phone, I called my uncle and he paid the money. After my uncle had paid, the guards still hit me and took me to work. They didn't know my uncle had paid. The money was taken by one of the guards only and while I was working he left the door open and I escaped. The other guards didn't know about it. The guard who took the money pretended he was making me work, he then left the door open and pretended I'd escaped...."

[This summary is based on three testimonies: 22 year old male asylum seeker from Ethiopia who was detained in Sabha detention centre in Libya in May to October 2014. He was interviewed for this study in Calais, France in December 2014; 20 year old Somali male detained in Sabha in February 2014, interviewed in the UK in December 2014 (see Box 3 for further details); and a 20 year old male from Mali who was detained in Sabha from April to June 2013, and interviewed in Sicily in January 2015 (see Box 2 for further details).

4.6.6. Departure from detention

Detention periods varied considerably from a few days to two years. On average, most detainees were held for a few months (see table 18).

Time period	Number of detainees	Detention periods	
		Breakdown of minor detainees	
4 days	1		
1 week	1		1
3-2 weeks	2		
1 month	5		2
1.5 months	1		
Few weeks	1		
2 months	4		2
3 months	2		1
4 months	2		
5 months	2		
6 months	3		
8 months	1		
9 months	1		
1 year	1		
2 years	1		
No precise dates	17		5

Table 19 summarises how detainees were released and shows that their departure from detention was not a carefully managed process. 12/45 said they escaped, either directly from the centre or when they were taken out for work. There were numerous accounts of escapes, some individuals ran away alone, one young migrant describes how he was put to work on a farm, and then one night when the guards were drunk, he jumped over the wall, ran into the road and hitched a lift in the boot of a passing car, all the way to Benghazi. Detainees often broke out en masse,

**“We broke the window and a lot of us escaped. I didn’t know where I was because we had arrived there blinded. We escaped in all directions and some of us were caught and brought back to the prison”.
(18 year old Gambian male migrant detained in Griana, Tripoli in spring 2014 and interviewed in Sicily/Italy in December 2014.)**

Some secretly planned their escape for months, digging escape tunnels and breaking door joints until they were finally able to make a run for it.

14/45 paid to be released using funds they had on them or by calling families/friends to make transfers. Payments ranged from hundreds to thousands of US dollars, often paid in local currency. The amount required seemed to vary and depended on the ability of the migrants, asylum seekers and refugees to pay. One Ethiopian female said,

**“The police gave me a phone to call my family. My parents paid USD 3000 to the police. The police blindfolded me and put me in a car. It took two hours. They took thirty of us from prison and left us in Tripoli”.
(20 year old Ethiopian female asylum seeker detained in Zawiya prison in autumn 2014. interviewed in Calais, France in January 2015)**

Detainees pooled resources to pay for vulnerable women and minors who could not afford to pay for themselves. Sometimes the guards would go back on their word. A Somali asylum seeker said he and others paid USD 2800 each to the guards to be put on a boat but instead they took the money and called in the military who put them in detention again (following which he and others again escaped).

Some people were just let go at the will of guards, as beneficence. One described how the boss of the

detention centre took him to work at his house. "After I finished cleaning he told me I free you...because it's Ramadan". One was released due to illness, having a skin condition so bad that the guards decided to let him go. A couple of people were released after a visit from their embassies. None could directly link their release to the visit of an international organization though this may have been the case behind the scenes.

Table 19		Monitoring the release of detainees
Monitoring criteria	Findings based on 45 detainees in Libya	
Release and After-Care Detainees are adequately prepared for their release and for life in the host community	12 of 45 escaped, 14 of 45 paid bribes to be released and the rest were let go at the will of the guards or because someone came looking for workers and paid for their release. This pattern is mirrored among minors: 4 of 11 paid to be released; 4 of 11 escaped; 4 of 11 were let go.	

It was also the case that locals would come looking for workers on construction projects or domestic work, for example. If the detainees were selected they would be taken out and expected to work. All said that they were not paid and eventually ran away from the employer. The employers paid the guards to get them released, "it is very common for rich people to go to this prison offer money to recruit people for cheap labour and get released", explained one asylum seeker. In a typical case a Somali couple was taken out to work in a private home, it was a "very big house with a garden and many cars", they were promised a salary of 400 dinars a month each (USD 300) but,

"...the family started treating us very badly, calling us slaves and exploiting and beating us....we realised we were in another form of captivity and made our escape". (22 year old female asylum seeker from Somaliland detained in Spring 2013 in a facility called 'Duishi', Tripoli and interviewed in Malta in December 2014)

Scars from these beatings were still visible months later when the asylum seeker was interviewed for this study.

In two cases, migrants and refugees were put straight on to a boat for Europe without paying anything. Aside from freeing up spaces in detention centres or responding to criticism from outside, it is unknown who might benefit from arranging such transfers without requiring the usual smuggling fees for crossing the Mediterranean. One migrant described such an incident.

"One night at about 2 o'clock after I'd been there for a week, some people came and took all the 50 of us and forced us to enter a van. They took us to the sea and made us enter a rubber boat. They took us in groups to a big wooden boat that was far from the coast. There were 300 people on the boat". (17 year old Nigerian male detained in spring 2014 in an unnamed immigration detention camp outside Tripoli. Interviewed in Sicily, Italy in January 2015)

In another instance, a General came to the detention centre with many armed soldiers and speaking in Arabic he said,

"They didn't want us here anymore, they were going to take us to the sea and kill us if we tried to escape they forced us to get on a truck and took us to the sea. There was a boat waiting for us. It was a small boat, there was not enough room for everyone but they forced us to get on the boat and then they pushed the boat towards the sea. They said they wished we would all die in the sea. There was only 20 litres of petrol on the boat. One of us had to start steering the boat. The petrol finished and we were in the middle of the sea. We didn't have water or food and we drifted for 5 days. 5 people died...we were rescued by the Italian navy". (20 year old male Malian asylum seeker detained in Sabha in spring 2013. Interviewed in Sicily/Italy in January 2015)

4.6.7. Life after detention

Re-detention

Migrants, asylum seekers and refugees remain vulnerable to re-detention after release. While some reported detention on multiple occasions by the authorities and/or smugglers, the incidence of this did not appear as prolific as described in earlier reports. It may be that re-detention is not as common as in the past because there are greater numbers of people passing through Libya or because ex-detainees make their way to Europe more quickly after leaving detention, meaning that there is little time for multiple arrests. What is apparent throughout the testimonies is that detention is scheme for extortion, with the authorities and criminal gangs all fighting to get a share of the money to be made. One Eritrean said,

“In Libya, you have two types of arrests: the mafia, they sell you as a slave to the Libyans or the police and they put you in prison. Sometimes in prison you work for free and pay USD 1000–2000 to be released from prison. It is better to be arrested by the police”.

(23 year old female asylum seeker from Eritrea detained in Sabha detention facility in 2014. Interviewed in Calais, France in January 2015)

Although the study is not about detention by non-State actors, it is worth noting that ‘smuggler detention’ is a typical experience usually upon arrival in Libya in order to force migrants and refugees to pay more, or to have them working for free if they are unable to pay, as described above. There were some unusual cases among the reports of smuggler detention, including a young boy who ran away to play football following the ban on football in rural areas by the president of Gambia in 2013.¹⁰⁸ Being part of a football academy, the game was his life. He could see no other future and embarked on a hazardous journey through Senegal, Mali, Burkina Faso, and Niger. He hid in a smuggler’s van as he could not afford the trip across the Sahara and was then held captive by the smuggler at the other end when discovered.

Leaving Libya

Upon leaving detention, migrants, asylum seekers and refugees go back to life in the shadows and try to make a living. Some work for a long time to save up the money. One migrant reported working in the market for two years to save the 2000 Libyan dinars (USD 1500) needed for the passage to Europe. Others borrow money from relatives abroad to pay the fee which ranges from USD 700 – 1700. Some minors said they were helped by ‘good Samaritans’ who gave them a roof, paid for their passage without asking for anything in return, although uncommon and an act often unheard of. Once ready to leave, smugglers may hold them again while enough people are gathered to fill up boats. For instance, they may be kept for two to three days in locked rooms with one meal, some water and no bathroom/toilet. They will then be taken to departure points and meet people arriving from different locations.

The voyage across the Mediterranean is another treacherous leg of the journey. Many people are crammed onto crowded boats. One Somali said,

“Hundred people [were] crammed onto an inflatable boat,...there were children... elderly people and women...some children died in their mothers arms....we were all scared...people were screaming like they’ve gone mad...”.

(20 year old refugee male from Somalia detained in spring 2014 in Sabha detention facility. Interviewed in the UK in December 2014)

One describes how they had to inflate the boat themselves, the smugglers forced 99 people onto it and the migrant says

“gave us a phone to call the Italians and a map. Someone was designated to steer the boat. He was Eritrean”.

(17 year old Sudanese male refugee detained in Abu Salim and in Ain Zara in mid-2014. Interviewed in Calais/France in December 2014)

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¹⁰⁸ Camara, (2013).

The boat journey, like the trip across the Sahara, brings with it enormous dangers and many simply do not survive. One asylum seeker reflected,

“I believe that the boat journey was the most difficult thing I have ever gone through...I found it harder than being in detention...”
(16 year old male asylum seeker from Somalia, detained in spring 2014 in the facilities in Tripoli zoo. Interviewed in the UK in January 2015)

Some make repeated attempts if boats are turned back and have to pay smugglers each time. One said he attempted the crossing four times before he was successful and paid thousands by the end.

Arrival in Europe

The journey takes a couple of days and all reported being rescued by a passing ship or by Italian and Maltese coastguards. They were taken to arrival centres in Italy and Malta. In Italy it was reported that fingerprints are either not taken or that migrants and refugees escape before this happens if they do not want to claim asylum in Italy. Migrants and refugees seem to have a good understanding about their prospects in different places, i.e. minors from West Africa who do not qualify for refugee status seem to stay in Italy where they can at least obtain some subsidiary form of protection, whereas those from North-East Africa rate their chances for a successful asylum claim in Northern Europe and make their way to Germany, Sweden and the UK as favoured destinations. Key informants involved in the assessment of protection claims in places of arrival said that the experience of detention and other abuses en route becomes a factor in itself when deciding whether an applicant is entitled to some form of protection. Additionally, reports that new arrivals are becoming younger raise concerns that the guarantee of protection for those who are under 18 is becoming a pull factor, particularly for those who have no political or social reason to leave and are doing so for personal reasons and interests.

Some migrants and refugees pay smugglers more money to take them on the onward journey, e.g. USD 500 from Italy to Calais, and USD 700 from Calais to the UK. Some also reported the experience of being sent back to the country of first arrival in line with the Dublin Regulation.¹⁰⁹ Recent press reports say that thousands of migrant and asylum-seeking children are disappearing from emergency shelters and hostels in Italy into a life of forced labour, sexual exploitation, and into a world of drugs, prostitution and Sicilian agriculture.¹¹⁰ There have also been arrests in Italy in relation to the sale of organs in exchange for giving passage to migrants and refugees to Europe.¹¹¹ Some are told by ‘smugglers’ where to find work to pay off their debts before they arrive in Europe; others receive instructions on their arrival in Sicily. Caregivers, who include staff working in homes for minors, say they suspect that minors remain under the control of organised criminal gangs once in Europe, for example, because their stories appear identical and rehearsed and say it is impossible to get minors to open up. This study did not come across any hard evidence as it did not access such disappeared children. However, as noted above, the fact that some migrants and refugees are given free passage may hint at the involvement of organised crime.

Moreover, reports in the Italian press¹¹², not specifically related to the sample of this study, point to the infiltration of the mafia in running government facilities for migrants, asylum seekers and refugees, such as Cara Mineo centre in Sicily. This study was originally intended to be carried out in the Cara Mineo centre, which houses around 5000 people, but authorisation was not received.

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109 “The recast Dublin Regulation establishes a hierarchy of criteria for identifying the Member State responsible for the examination of an asylum claim in Europe. This is predominantly on the basis of family links followed by responsibility assigned on the basis of the State through which the asylum seeker first entered, or the State responsible for their entry into the territory of the EU Member States, Norway, Iceland, Liechtenstein and Switzerland. The aim of the Regulation is to ensure that one Member State is responsible for the examination of an asylum application, to deter multiple asylum claims and to determine as quickly as possible the responsible Member State to ensure effective access to an asylum procedure. The recast Dublin Regulation entered into force in July 2013 and is aimed at increasing the system’s efficiency and ensuring higher standards of protection for asylum seekers falling under the Dublin procedure. It contains improved procedural safeguards such as the right to information, personal interview, and access to remedies as well as a mechanism for early warning, preparedness and crisis management. It applies to applications for international protection lodged as from 1 January 2014.” See European Council for Refugees and Exiles, Dublin Regulation, <http://ecre.org/topics/areas-of-work/protection-in-europe/10-dublin-regulation.html> (accessed on 27 March 2015) for further details

110 Muzi, 2014.

111 Tiscali, 2014.

112 Zancan, 2015. See also Pipitone, 2015; Palermo Repubblica, 2015.

The current situation of migrants, asylum seekers and refugees in the sample depends on where they are as set out in table 20 below.

	France	Italy	Malta	UK
Refugee status	2 (including one with 10 year refugee status who is trying to go irregularly to the UK)			
Humanitarian or subsidiary protection		2		
Awaiting outcome of asylum application	5 (some said Italy fingerprints so have to go back)	10 including 3 minors	2 minors	
Current status not specified	2	3 including 2 minors	7 including one minor	2 including a minor
No status - limbo	5 including 2 minors (entitled to unaccompanied minor support in France but not taken up)			
Third country	1 went to Sweden; 2 including 1 minor went to UK			

The 19 interviewees waiting in Calais and its nearby ‘jungles’ are in limbo, in difficult circumstances and waiting for an opportunity to cross into the UK. Their lives are still uncertain. Their reasons for wanting to go to the UK include language, family/friends and perceptions that it is easier to find work, to receive social security benefits, to integrate and to be accepted as compared to in France and Italy. One minor in Calais said he would rather endure the hardship of the jungle than take up the offer of staying in a home for unaccompanied minors in France,

“I want to try one month more to go to the UK. If it doesn’t work, I’ll stay in France. My plan is to study in the UK”
(17 year old Sudanese male asylum seeker detained in a facility known as ‘Turhana, near Tripoli at the end of 2013. Interviewed in Calais, France in December 2014.)

This migrant called the research team shortly afterwards to say he had arrived in the UK.

By contrast, the 32 migrants, asylum seekers and refugees encountered in Italy and Malta are on the whole more settled; although the majority are still awaiting the outcome of their asylum claims, they are receiving some support, particularly in the case of minors and are found to be getting on with their lives. One said,

“Every day I go to school to learn Italian. I watch movies, I play sports and music. The people here take care of us. They bring us to the authorities to help us have protection. I have a caregiver who looks after me. I speak many local African languages and would like to work here in Italy to help people like me solve their problems”
(17 year old Gambian male migrant detained in an un-named facility near Tripoli in spring 2014. Interviewed in Sicily/Italy in December 2014)

The two interviewees encountered in the UK, despite also waiting for the outcome of their asylum claims, likewise, reported a positive outlook, and said they were studying, working and well-supported by staff,

“I can’t believe that I don’t have to get beaten again...I can get food, shelter and even see a dentist if I need one...life is much better now that I am awaiting asylum

outcomes...but I also feel very sad about not having my family with me...".
(20 year old male asylum seeker from Somalia detained in Sabha in spring 2014.
Interviewed in the UK in December 2014)

Caregivers working with these minors on arrival in destination areas commented on the adaptation that is needed by minors used to fending for themselves. The adjustment to European standards, definitions and expectations of childhood can be a challenge for minors who have overcome such major tribulations, have been used to their independence, and treated as autonomous adults by their own cultures.

Migrants and refugees in Calais appear in limbo and are more jaded by their experiences. One migrant waiting in Calais who had already acquired refugee status in France had still gone irregularly to the UK in search of work, had worked there for a year before being found by the police and deported back to Calais. He was aware of the realities of life as an irregular migrant and the challenges facing migrants, asylum seekers and refugees in Europe, including the increasing political and public animosity. He expressed a longing to go back to his country, if only it was at peace.

"When you are in Eritrea you dream about Europe. When you are in Europe you dream about Eritrea".
(23 year old male asylum seeker from Eritrea detained in Kufra at an unknown date.
Interviewed in Calais, France in January 2015.)

In terms of lasting effects, and it is worth noting that a sizable portion, around a third of the sample, said they were fine, notably these were people whose status had been somewhat regularised. Others bear the physical and psychological scars of the arduous voyage. Psychological problems include flashbacks, nightmares, depression and anger and emotions range from feeling sad when they recall these events to more profound disturbances. One woman who had undergone rape and terrible trauma throughout the journey at the hands of guards and smugglers said,

"I have many problems, I've been taken to hospital because I couldn't breathe. I always have nightmares and I see a psychologist who comes every week here in the centre. He gives me drugs to sleep".
(23 year old female migrant from Nigeria detained in an unknown facility on the outskirts of Tripoli in autumn 2013. Interviewed in Sicily/Italy in January 2015.)

Memories of people being shot dead or raped continues to haunt many. As one said,

"..I have even witnessed them shooting two men trying to escape from the detention centre...I feel very sick whenever I remember this".

Another is anguished by memories of seeing a man shot in front of him and then being forced by Libyan guards to go and tell the man's brother that he was dead, and also witnessing,

"Libyan soldiers beating face of Sudanese man with his Koran till his eye was bleeding, he was crying as he apologised".
(24 year old Sudanese male refugee detained in Koufra in late 2012. Interviewed in Calais/France in January 2015.)

The physical legacy includes injuries from beatings (e.g. limp) and ongoing skin and respiratory problems. One interviewee could be seen to have a permanently deformed arm following beatings received in prison. Another asylum seeker waiting in the jungles of Calais said,

"I have physical problems. My shoulder is not good. I have scars on my body and something is broken in my hand. I'm completely down and don't have contact with my sisters".
(17 year old Sudanese male, asylum seeker detained in late 2013 in 'Turhana' jail.
Interviewed in Calais, France in December 2014)

Recommendations from migrants, asylum seekers and refugees

Some migrants, asylum seekers and refugees made recommendations to be included in the study as follows:

- Training for Libyans on human rights.
- International organizations to visit detention facilities.
- Awareness-raising in sending countries. As one put it,

“The international organizations and embassies should go to country of origin and explain the situation in Libya and warn people not to go there”. Another said, “I have physical marks from the beatings, skin problems because of the lack of shower, psychological problems as I saw murders and rapes and couldn’t do anything...I never thought they could treat me like this...Libya is worse than the countries I escaped from, Eritrea and Sudan. There are jails under the ground in Eritrea but we don’t get shot in the street, we don’t have such racism. People leaving their country should have awareness about Libya”.

- Giving migrants, asylum seekers and refugees the chance to find a safe place nearer to home. One Somali young woman said that there should be more camps in nearby countries, Ethiopia and Sudan,

“Our intention was not to come to Europe, if we can get in Sudan or Libya....most people have left because of problems and need a place safe and secure and if they get this at a place near home, they will stay there, otherwise they will come and continue even if they die in the process”.

- Others added that international organizations should enable migrants, asylum seekers and refugees to travel without risks.

4.6.8. Detention of nationals

The study above alludes to some perceptions among migrants, asylum seekers and refugees that nationals are treated better in detention. Key informants confirm that common law Libyan prisoners may have relatively better facilities such as beds/mattresses. However, human rights observers say that Libyan nationals also face grave violations of their rights. Torture and other ill-treatment in Libya is an on-going and widespread concern in many detention centres. It is most frequent immediately upon arrest and during the first days of interrogation as a means to extract confessions or other information. From late 2011, the United Nations Support Mission in Libya (UNSMIL) recorded 27 cases of death in custody where there is significant information to suggest that torture was the cause. The current situation of prolonged detention and interrogation at the hands of armed brigades without experience or training in the handling of detainees or in conducting criminal investigations, and no effective judicial oversight, is a major factor in facilitating the torture or other ill-treatment of detainees.¹¹³ Militias remained responsible for widespread abuses, including torture and deaths in custody.¹¹⁴

Detainees are usually held without access to lawyers and only have occasional access to families, at most. The vast majority of an estimated 8,000 conflict-related detainees is also held by both government and militias without due process and no access to lawyers or judicial reviews.¹¹⁵ Detainees held under the nominal authority of the Judicial Police. According to Human Rights Watch in 2014 only 10 per cent of those held had been sentenced, and the rest remained held in pre-charge detention. In addition, the Interior and Defence Ministries continue to hold undisclosed numbers of detainees, while many militias also continued to hold unknown numbers of detainees in informal facilities.¹¹⁶

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113 UNSMIL and OHCHR, 2013.

114 Human Rights Watch, 2015a.

115 UNSMIL and OHCHR, 2013.

116 Human Rights Watch, 2015a.

4.6.9. Policy response

Libyan administrative authorities

The Department for Combating Illegal Migration (DCIM) was established in May 2012, not long after a Memorandum of Understanding on migration cooperation between Italy and Libya (TNC) was signed in April 2012. DCIM comes under the Ministry of the Interior and leads the policy response on the part of the Government. Many of the operational detention centres, as stated earlier in this report, are managed by DCIM whose responsibilities, according to government decree, are set out in Box 6.

The ability of DCIM to develop a policy response is currently constrained by various factors:

- Not all detention centres where migrants, asylum seekers and refugees are being detained are under its remit. This study found allegations relating to six centres that were definitively under DCIM control, the remaining 12 centres came under the control of militias or undefined groups. Moreover, as control has transferred between militias and DCIM over time, it is not possible to say if DCIM was in control of specific facilities at the time when some of the particular incidents cited in this report took place.
- The current political and military crisis in Libya with the country under the control of two rival Governments constrains the ability to develop countrywide laws and policies. While DCIM and its detention facilities continue to function, the centres fall under the geographical scope of different political factions. The current crisis inevitably constrains the ability to develop a coherent policy response due to the lack of stable political leadership, resources and capacity.
- The breakdown of law and order in Libya is fuelling the high-value smuggling operations of organised criminal networks leading to increasing numbers of migrants and refugees transiting through Libya and onwards to Europe. In addition, allegations of the involvement of militias¹¹⁷ and some Libyan officials¹¹⁸ in this business further hamper the ability of the administration to address this issue at a policy level.

Given this context, the current response of the Libyan authorities is to acknowledge that problems exist and to express an interest in strengthening the system for migration management subject to tackling these various constraints. A rapid assessment team visiting Libya in November 2014 reported that “While seriously regretting the situation...Libyan immigration detention authorities...have pointed to the lack of tools required to overcome many of the shortcomings of the immigration detention regime.”¹¹⁹

The problem of immigration detention in Libya is part and parcel of broader migration challenges facing the country. Faced with heavy migration pressures arising from Libya being both a transit and destination country, the Libyan immigration authorities, especially the administration responsible for the management of irregular migration, including, in particular, the Ministry of Interior, have been overwhelmed and their activities limited to “firefighting”.¹²⁰ As a result, the assessment of the need to revise and develop new policies, strategies, legislation and other normative acts has had to take a back seat.

Faced with this situation, the Government of Libya in 2013, within the framework of the ‘Stabilising at-risk communities and enhancing migration management to enable smooth transitions in Egypt, Libya and Tunisia’ (START) Programme, and with the help of the IOM, established a Policy/Legal Task Force mandated to assess and make suggestions for the revision of Libya’s policies and legislation relating to migration. As part of this process a rapid assessment was carried out in November 2014 in order to support the efforts of the Policy/Legal Task Force to develop a migration policy for Libya.¹²¹

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117 BBC, 2015b.

118 RMMS, 2014.

119 Eurasyllum, 2014.

120 Eurasyllum, 2014

121 Eurasyllum, 2014.

ROLE AND RESPONSIBILITIES OF THE DIRECTORATE FOR COMBATING ILLEGAL MIGRATION (DCIM)

The responsibilities of DCIM according to government decree are as follows:

1. Participation in the drafting and implementation of joint security plans, to ensure the maintenance of security and public order in the country.
2. Study and develop strategic plans that will reduce the phenomenon of illegal immigration in the State of Libya.
3. Drafting and implementing security plans to combat the crimes of human trafficking and smuggling.
4. Locate the illegal immigrants in Libya and place them in reception centres and follow them up and carry out the procedures for deporting them to their countries of origin, in coordination with the relevant authorities.
5. Record-keeping of illegal migrants and smugglers who are caught and set up a database about them.
6. Collect information and investigate cases of human trafficking, organized crime and people smuggling issues and infiltrations. Classify and categorise these information and work in coordination with the relevant security services in regards to the prosecution of offenders and suspects.
7. Carry out studies and researches on the causes of the phenomenon of illegal immigration and human beings trafficking to reduce it. Suggest the development of work methods and the introduction of modern scientific technology to reduce this criminal phenomenon.
8. Evaluate and identify the security centres and study the issues and the difficulties that they are facing and develop solutions to address them.
9. Direct supervision of all branches, offices, reception centres, departments and other centres linked to it. Coordinate all the efforts and direct them towards the realization of the objectives and tasks assigned to the Body.
10. Follow-up the departments and the centres in the Sahara with regards to operate vehicles patrols to combat illegal immigration and smuggling in general, along the second ring.
11. Perform daily administrative duties for all the units of the Body and inspect all the officers and follow up on them to ensure that they carry out their duties and their commitments as expected by the laws, the regulations and the decrees in force.
12. Work to provide all ways and means of modern technology, necessary for the Body in order to carry out its tasks.
13. Set up an annual training plan for the employees of the Body to optimize their security and work performance, by carrying out at home and abroad training.
14. Attend local, Arabic and international conventions, seminars and meetings with regards to combating both phenomenon of illegal immigration and people smuggling and border security.
15. Work in coordination with the relevant regional security agencies and cooperate with the correspondent Arabic parties, including international and Arabic organizations, in order to benefit from their experience and their potentials in this field, to address and degrade the criminal phenomena mentioned above.
16. Any other tasks that will be either assigned to the Body or falls within its powers, in accordance with the legislations in force.

This rapid assessment made broad-ranging recommendations about all aspects of Libya's migration governance including, strengthening channels for legal migration, for instance, through temporary migration and circular migration programmes. On irregular migration, the assessment found that the wide scope of Libyan legislation allows for the imprisonment of persons who have committed minor immigration violations, or who should not be subject to penalties at all (for instance, the imposition of sanctions such as deportation and immigration detention on asylum seekers and persons found to be in need of international protection, or the absence of specific trafficking-related legislation that criminalises the offence and protects the rights of the victims). This approach, aside from being in contravention of international law as discussed in this study, is also leading to an unnecessary overburdening of law enforcement mechanisms and detention capacity.

The rapid assessment confirms the information contained in this study about poor conditions in immigration detention facilities (physical structures, layout, equipment, material assistance and services, health services and legal and social counselling). It also highlights the gaps in Libya's immigration detention rules and practices such as the possibility of indefinite detention of migrants; the apparent absence of alternatives to immigration detention; allowing decisions on detention to be made by an administrative authority without judicial power, thus not requiring ex-officio involvement of the judiciary; holding asylum seekers, whose claims have not been determined and rejected, in closed detention centres together with other migrants.

The rapid assessment suggests the following policy measures on immigration detention specifically which have yet to be adopted by the Libyan authorities but which point the way forward in terms of a policy response:

- Introduction of a maximum detention period, through a revision of the legislation, or, until such a revision can be achieved, by way of administrative practice.
- A limitation on the very wide circumstances which may, according to Libyan legislation, result in immigration detention.
- Involvement of the judiciary in decisions regarding immigration detention. As a minimum, the judiciary should be involved in reviewing the need to detain individuals in the case of prolonged detention periods.
- In order for Libya to adhere to the principle that asylum seekers should not be detained, consideration to be given to accommodating this group in open reception centres, rather than holding them with other foreign nationals in closed detention centres, a measure that would also contribute to reducing pressures on those centres.
- In order to improve conditions in immigration detention facilities, develop further rules regulating conditions in immigration detention centres, the treatment of migrants, asylum seekers and refugees, and strengthening the role of intergovernmental organizations and NGOs in detention centres, for example, through the provision of legal and social counselling.
- Explore the legal possibilities of applying alternatives to immigration detention, such as bail or temporary release.

Inter-governmental and non-governmental organizations

Contrary to practice in many other countries, NGOs and other civil society organizations are only sporadically involved in providing assistance to migrants in immigration detention facilities and are therefore unable to help alleviate the burden faced by the authorities.¹²² A number of local civil society organizations are registered as having access to facilities, according to key informants on the ground, and their role could be further strengthened.

The international community including IOM, UNHCR, DRC, IMC, ICRC and others are engaging with DCIM to support a protection-sensitive approach to border management. A number of these agencies form part of a detention working group (sub-group of the protection working group) to coordinate with others on the monitoring of the detention population in facilities under the administration of DCIM, providing essential relief items and medical assistance on a humanitarian basis. Information from key informants shows that visits from international agencies took place to DCIM detention centres over the course of

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122 Eurasylum, 2014.

2013 and 2014. UNHCR reports that it has successfully advocated for the release of vulnerable asylum seekers and refugees such as pregnant women, children (including unaccompanied minors) and persons with medical conditions, and that it continues to explore alternatives to detention for persons of concern through community based structures.

International agencies are primarily engaging only with persons or groups operating detention facilities with official State imprimatur. A careful consensus is maintained in the detention working group, to exercise caution in approaching centres that are not managed or overseen by DCIM. There are numerous centres run by militia groups, some of which are under the command of one of the two rival governments in Libya. However, UNHCR, and possibly other international agencies, will not presently be engaging with these centres.

Other activities of international agencies involve helping to build capacity in the Libyan administration. IOM has supported the rapid assessment described above. In early 2014, IOM also began rolling out a programme to assist the Ministry of the Interior in registering migrants in six immigration detention centres and has plans to extend this to other centres.¹²³ In 2013-2014, UNHCR conducted a series of training workshops on principles of international protection and refugee law for government officials, NGOs and Libyan civil society in order to shape DCIM and other officials' attitudes towards refugees and asylum seekers, and to lay the foundations for the development and implementation of a national asylum law. This process became stalled with the renewal of fighting in May 2014, however, it is an issue that UNHCR hopes to re-engage with at the earliest opportunity.

Practical assistance includes a UNHCR emergency telephone hotline (24/7) for asylum seekers and refugees in detention, who require assistance. UNHCR will soon provide a similar hotline to the Libyan Coast Guard to ensure that information regarding interceptions or rescues at sea can be communicated to UNHCR immediately. UNHCR is also coordinating direct communication between Coast Guard authorities, DCIM, IMC (for medical assistance, including hygiene kits) and other relevant agencies providing humanitarian assistance.

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123 Eurasylum, op. cit

'.....My name is Joy. I am 24 year old woman from Nigeria. When my parents died, I took my younger sister and we went to live with our uncle. It was a very difficult experience, my uncle kept sexually harassing me and because I wouldn't do what he wanted, he beat me very badly each time I refused. I still have the scars on my back today from the beatings I received. I couldn't stay with my uncle any longer and as we had no other relatives in Nigeria, a friend of mine who was going to Libya to be with her husband, invited me and my sister to go with her.

We took a bus from Edo State to Cotonou and then another bus to a different country. We passed through many countries, sleeping at bus terminals, eventually arriving in Dirku, Niger. The journey from Nigeria to Niger took about a week. My friend paid for all of us. We then crossed the Sahara to get to Libya; fortunately we didn't face any problems. When we got to Libya, we took a taxi to go to Tripoli. The police stopped the taxi and took all three of us to jail. The policemen were speaking Arabic and we couldn't understand them. It was October 2013 and we were held in a prison on the outskirts of Tripoli for four days, I don't know the name. There was no legal process, no opportunity to claim asylum and no offers to help us return to Nigeria.

Men and women were kept together in the same room, there were eight of us, four males and four females, including my sister who was 15. During the night, the soldiers came to take women to their rooms. The women were raped. It happened every night. It happened to me too. I'm thankful that they didn't rape my younger sister. We were only given bread and water once a day. There were no beds, we had to sleep on the floor. There were no toilets; we had to do our business on the floor. We were not allowed out. My sister was very sick but no-one called a doctor, "It was a terrible place. No chairs, no beds, no toilets, no food".

One night, it was a Friday, a man, who was wearing civilian clothes, opened the door of our cell and let us escape, it was Friday and in Libya it's like Sunday. No one was there. I don't know who he was. We were asked for 1000 Libyan dinars each to be released but we didn't have the money and we were let go anyway. After we got away from the prison, my friend called her husband who came and took us to their home. Me and my sister lived with them for two months.

I found a job as a cleaner working for an Arab family. One day the man I was working for tried to rape me so I had to leave the job. My friend suggested that I go to Italy with my sister because life in Libya was very difficult. My friend took us to the seaside where there were a lot of people waiting to go on the boat. I talked to the captain and he let us on without paying for the journey. We spent three days on the sea. We had enough water and food, the sea was calm and the journey was not difficult. It was a very big boat with 500 people on it. We got to Lampedusa in late 2013. From there I was taken to the centre where I currently stay. My sister was with me for a couple of weeks but then she was moved to a centre for minors, I get to see her every week.

I've been living here now for several months. I've claimed asylum and am waiting for my interview. When I receive my documents, I'd like to find a job and a home for me and my sister. We need help, we are alone, I need my documents so that I can take care of my sister, "I have many problems. I've been taken to hospital because I couldn't breathe. I always have nightmares and I see a psychologist who comes every week here in the centre. He gives me drugs to sleep".....'

Testimony of a 24 year old Nigerian female who was detained in an un-named facility near Tripoli in October 2013. She was interviewed in Sicily/Italy in January 2015. The name 'Joy' is a pseudonym.

5. CONCLUSIONS

Migrant, asylum seeker and refugee detention is by far the most pronounced in Libya as compared to other North African countries in terms of the numbers undergoing detention. It has been an issue for many years. Prior to the overthrow of Gaddafi in 2011, Libya, as a regional hub for migrants, asylum seekers and refugees and a gateway to Europe, was consistently criticised by human rights observers for pursuing migration management policies that fell far short of international standards. This study updates the situation and finds that the current fragmentation and disarray in Libya provides even more fertile ground for violation and abuse against non-nationals.

The testimonies of 45 migrants, asylum seekers and refugees, in this study show a clear pattern of cases that far below the norms set by international law when it comes to the detention of migrants, asylum seekers and refugees. Even though the sample in this study does not allow for generalized conclusions on the situation in the country, it must be heavily suspected that these cases show rather general practice than exceptions in Libya. The random and opportunistic manner in which detention takes place without any checks or safeguards, indicates that detention in Libya has become something of an extortion scheme where the police, army, militia, smugglers, traffickers, criminal gangs, civilians all appear to be scrambling to profit from this practice. There does not appear to be any rational policy behind this detention at this point in time as the practice is not contributing to the governance of migration in terms of managing migration flows, acting as a deterrent to future migrants, asylum seekers and refugees, buffering security (through identity and health checks) or protecting the labour market.

The practices identified by this study breach human rights laws, many of which the Libyan state has committed itself to through its accession to various treaties or by virtue of international customary law (for example, the principle of non-refoulement also exists under international customary law). While States have a sovereign right to protect their borders and determine their own laws, including over the admission, stay, detention and removal of non-nationals from their country, they are obligated to manage migration flows in a way that fully respects the rights of individuals within their territory and under their jurisdiction. Human rights are inalienable and should not be granted on the basis of citizenship. As such, the following breaches were identified to be taking place in Libya:

- Grounds for detention are established by law but are flouted. The study did not come across any evidence of a legal process being used to detain migrants and refugees.
- Detention should be used as a measure of last resort and yet testimonies describe it as a habitual practice, any agent of the state, member of a militia group or ordinary civilian appears able to detain migrants and refugees with impunity.
- Detention should be ordered or approved by a judicial process. The study found no evidence of this at all, even in cases of detention that took place before the escalation of the crisis in mid 2014.
- Migrants and refugees should be informed of the reasons for their detention. At most this involved a brief statement by the arresting officer of the illegality of the person's presence in Libya. There were no instances of migrants and refugees being given any kind of detailed written or verbal explanation.
- Migrants and refugees should be able to communicate with the outside world, including to contact UNHCR. This was customarily denied with most migrants and refugees staying in detention for months without seeing friends, family, lawyers, embassy officials or others. A few encountered visits from international agencies in some of the larger facilities. Otherwise the only contact with the outside world was when migrants and refugees were given a phone to call family and friends for money to pay bribes to guards for their release.
- The authorities have a responsibility to register the presence of migrants and refugees placed in detention. No records were made available to this study though it appears that an initiative is underway by IOM to register detainees in facilities managed by DCIM.
- The conditions of detention are required to respect the inherent dignity of every human being. These standards were widely disregarded with most migrants and refugees trapped in inhumane conditions with inadequate food, drinking water, sanitation and little or no access to the open air and recreational activities.
- There is an obligation to allow monitoring of detention centres. This appears to happen haphazardly. Not all detention facilities are known about and where they are known, access to external monitors is restricted.
- Vulnerable individuals should not be detained. Yet most of the cases in this report concerned the detention of children and young people, many of whom were under 18 years of age at the time of detention. Most were detained alongside unrelated adults instead of in separate facilities, and were not granted any special provisions or services relevant to their age. The

detention of women too raises concerns; they were usually kept separate from male detainees but female warders were rare, and sexual violence by male guards was a constant threat.

- In addition to these breaches, there are other human rights violations in relation to the forced labour of migrants and refugees and the trafficking of individuals.

While clear breaches of international human rights law exist, the current challenge in Libya is knowing who is accountable for such breaches. Given the breakdown of law and order, the ongoing political crisis and armed hostilities, and the break-up of the country into areas controlled by two 'Governments' and various militias, the chains of command and control over the various centres where illegal detention is occurring are unclear.

Such violations are reported to occur in immigration detention centres that are controlled by the Libyan administration. They fall under the political control of the 'recognised' Government operating from the East of the country or the de facto Government of the Libyan Dawn in the West of the country depending on where they are geographically located. In addition, there are other detention centres under the control of militias or other groups (who are yet to be unidentified).

Governing authorities and militias in all parts of the country are to be reminded that detention for immigration purposes ought not to be mandatory or automatic. According to international human rights standards, it should be a measure of last resort, only permissible for the shortest period of time and when no less restrictive measure is available. Authorities have an obligation to establish a presumption in favour of liberty, to first consider alternative non-custodial measures, proceed to an individual assessment and choose the least intrusive or restrictive measure. The reasons put forward to justify detention should be clearly defined and exhaustively enumerated in legislation. If, as a measure of last resort, an authority uses detention for immigration-control purposes in an individual case, this should be considered only when someone is at risk of absconding or presents a danger to their own or public security. Administrative detention should not be applied as a punitive measure for violations of immigration laws and regulations, as those violations should not be considered criminal offences.

Given the current situation, the Libyan administration recognises the shortcomings in the immigration detention system but is hampered by a lack of capacity and resources to comprehensively tackle these issues. Pending a wider political solution to the instability in Libya, the authorities may at least consider instituting the following few key policy measures in immigration detention centres under their control to help alleviate the situation:

- Introduction of a maximum detention period and a limitation on the very wide circumstances under which detention may be ordered. This can be done by way of administrative practice until it becomes possible to revise legislation.
- Introducing appropriate screening mechanisms to avoid instances of unlawful or arbitrary detention.
- The systematic registration of detainees.
- The institution of some key elements of due process including access to legal representation, and the involvement the judiciary in decision-making.
- Ensuring the detention of vulnerable persons (minors, women, asylum seekers and refugees) is compliant with international law.
- Improving the conditions in detention centres, for example, by modelling approaches that comply with international law in certain facilities.
- Allowing inter-governmental organizations and NGOs a stronger role to provide direct support to detainees and to build the capacity of detention centre staff.

The need for a humane and orderly framework for managing migration flows in Libya is taking on an ever increasing importance. There can be little doubt that the absence of such a system is contributing to the growing numbers of migrants, asylum seekers and refugees seeking to escape Libya for the safety of Europe. Record numbers are taking on the hazardous voyage across the Mediterranean; in the space of one weekend in May 2015 alone, Italian coastguards rescued nearly 6000 migrants and refugees.¹²⁴ The widespread detention of migrants, asylum seekers and refugees in appalling conditions in Libya, far from acting as a deterrent, appears to be contributing, alongside the political and military instability in the country, to a desire to leave the country at any cost. Libya, once a destination for migrants and refugees, a place of economic opportunity and safety, is now simply becoming a departure point.

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124 Kirchgassner, 2015.

From the perspective of the migrants and refugees themselves, detention in Libya is but one of many travails faced by them for safety, security and better opportunities in life. The study highlights the sheer ingenuity, determination and courage of young migrants, asylum seekers and refugees as they make their way across North and Sub-Saharan Africa, escaping captivity, brutality, and overcoming numerous hardships.

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EXECUTIVE SUMMARY

This study paints a damning picture of the immigration detention of young migrants, asylum seekers and refugees in Libya today. Based on in-depth interviews with 45 detainees (85 per cent of whom were unaccompanied children or young people), the study reveals a consistent pattern of arbitrary detention; of people held for months at a time without any form of due process in squalid, cramped conditions. Detention occurs in facilities across the country, many of which are reported to be under the control of the governing authorities or militia forces. Serious violations, including allegations of violence and brutality, are said to be commonplace, including in some of Libya's most well-known detention centres.

As the first study of its kind to assess the particular plight of detained refugee, asylum-seeking and migrant children and youth in Libya's immigration detention centres, it provides timely information about the current situation in the country. The right to liberty and freedom from arbitrary detention is among the most fundamental of rights belonging to all human beings, and its consistent denial, especially to vulnerable minors and young people, is a matter of the gravest concern. The absence of a humane and orderly framework for handling migration flows in Libya is no doubt a contributing factor to the ever increasing numbers of migrants, asylum seekers and refugees willing to risk their lives in the Mediterranean to reach the safety of Europe.



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